TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 556

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CREEK, STATE OF OKLAHOMA, A MUNICIPAL CORPORATION, ET AL., PETITIONERS,

vs.

EVELYN SEBER, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR CERTIORARI FILED NOVEMBER 30, 1942.

CERTIORARI GRANTED JANUARY 11, 1943.

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 2488

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CREEK, State of Oklahoma, a Municipal Corporation et al., Appellants,

vs.

EVELYN SEBER et al., Appellees.

STATEMENTS OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL—Filed January 23, 1942

Come now the appellants herein and, pursuant to Rule 13 of the Revised Rules of the United States Circuit Court of Appeals, Tenth Circuit, state that the points on which they intend to rely on appeal in the above case are as follows:

(1)

That this court has no jurisdiction of the parties in this action for the reason that there is no diversity of citizenship.

(2)

That the Complaint does not state facts sufficient to constitute a valid cause of action at law or in equity against the appellants herein or either of them.

(3)

That it appears on the face of said Complaint that the ground of federal jurisdiction relied on therein is that a federal question is involved, but said Complaint clearly shows that in fact there is no such question actually involved and, therefore, this court is without jurisdiction.

[fol. 2] (4)

That the complaint shows on its face that if a cause of action ever accrued wherein said taxes were wrongfully collected by the County Treasurer of Creek County, Oklahoma,

that said action could and should have been maintained by said appellees by paying said taxes under protest and bringing suit within the time prescribed by statute, or filing an affidavit of erroneous assessment with the Board of Equalization of Creek County, Oklahoma, as prescribed by statute, or that said action could have been maintained at any time within three years after the payment of said taxes, which time expired some time before the bringing of this action.

(5)

That the Federal Act of June 20, 1936, passed by the 74th Congress, the same being reported in 49 United States Statutes at Large, and the Federal Act passed by Congress on May 19, 1937, the same being reported in 50 Statutes at Large 188, amending Section 2 of the 1936 Act, supra, under which the appellees assert their rights to recover said taxes and prevent said land from being placed upon the tax rolls of Creek County and the same assessed as other lands therein located belonging to citizens of the State of Oklahoma, are unconstitutional, void and of no force and effect.

(6)

That said Act of Congress enacted on June 20, 1936, and the Act of May 19, 1937, amending said former act, relied upon by the appellees herein to support their cause of action against these appellants, even though declared constitutional, have no application to the lands involved in this cause of action.

(7)

That paragraphs numbered 1, 2, 3, 4, 5 and 6 of the court's conclusions of law are not supported by the evidence and are contrary to law.

[fol. 3]

(8)

The judgment of the court is (a) contrary to the evidence, (b) to the law, and (c) to the law and evidence.

Mac Q. Williamson, Attorney General of the State of Oklahoma, by Houston Bus Hill, Assistant Attorney General of the State of Oklahoma; Everett Collins, County Attorney, Creek County, Oklahoma; Kenneth Hughes, Assistant County Attorney, Creek County, Oklahoma, Attorneys for Appellants.

Affidavit of Mailing

STATE OF OKLAHOMA,
Oklahoma County, ss.:

Effa Alexander, being duly sworn upon oath, deposes and says that on the 21st day of January, 1942, she enclosed a copy of the attached Statements of Points on Which Appellants Intend to Rely on Appeal in an envelope addressed to: Mr. George Jennings, Attorney at Law, Sapulpa, Oklahoma, with postage thereon fully prepaid, and deposited the same in the United States post office at the State Capitol, in Oklahoma City, Oklahoma.

Effa Alexander.

Subscribed and sworn to before me this 19th day of January, 1942. Jean Brawner, Notary Public. My commission expires October 27, 1945. (Seal.)

[File endorsement omitted.]

IN UNITED STATES CIRCUIT COURT OF APPEALS

DESIGNATION OF PARTS OF THE RECORD PROCEEDINGS AND EVIDENCE TO BE INCLUDED IN THE RECORD ON APPEAL—Filed January 23, 1942

The Clerk will cause to be printed for the consideration of the Court in deciding this case the following portions of the record:

(1) Plaintiff's Bill of Complaint, including exhibits;
[fol. 4] (2) Order Authorizing Amendment of Complaint, entered on November 4, 1940;
(3) Defendant's motion to dismiss bill of complaint;
(4) Order overruling defendant's motion to dismiss;
(5) Joint motion for substitution of party, filed herein on May 26, 1941;
(6) Waiver of Notice of hearing motion for substitution filed herein on May 26, 1941;
(7) Order allowing substitution of party;
(8) Defendant's Answer;
(9) Agreed Statement of Facts;
(10) Findings of Fact and Conclusions of law, filed herein by the court on July 21, 1941;
(11) Decree filed herein on July 21, 1941;

(12) Defendant's Notice of Appeal, filed herein on October 15, 1941;

(13) Order Extending Time within which to lodge appeal in the Tenth Circuit Court of Appeals entered herein on November 29, 1941;

(14) Application to Substitute Successor in Office, party defendant;

(15) Order substituting W. Howard Seay, as County Assessor of Creek County, as defendant in the above cause in lieu of J. Clyde Staiger, predecessor in office, entered herein on December 20, 1941;

(16) Order Extending Time within which to lodge appeal to the Tenth Circuit Court of Appeals, entered herein on December 30, 1941;

(17) Petition to vacate order substituting party, filed herein by defendants;

(18) Order overruling petition to vacate order substituting party, entered on January 5, 1942;

(19) Cost bond filed herein;

[fol. 5] (20) Statement of points on which appellants intend to rely on appeal, with proof of service; and,

(21) Designation of Parts of the record proceedings and evidence to be included in the record on appeal, with proof of service.

Mac Q. Williamson, Attorney General of the State of Oklahoma; Houston Bus Hill, Assistant Attorney General; Everett Collins, County Attorney, Creek County, Oklahoma; Kenneth Hughes, Assistant County Attorney, Creek County, Oklahoma, Attorneys for Appellants.

AFFIDAVIT OF MAILING

STATE OF OKLAHOMA,
Oklahoma County, ss:

LeRose Welch, being duly sworn upon oath, deposes and says that on the 21st day of January, 1942, she enclosed a copy of the attached Designation of Parts of the Record Proceedings and Evidence to be Included in the Record on Appeal in an envelope addressed to: Mr. George Jennings, Attorney at Law, Sapulpa, Oklahoma, with postage thereon

fully prepaid, and deposited the same in the United States post office at the State Capitol, in Oklahoma City, Oklahoma.

LeRose Welch.

Subscribed and sworn to before me this 21st day of January, 1942. Effa Alexander, Notary Public. My commission expires October 28, 1944. (Seal.)

[fol. 6] IN DISTRICT COURT OF THE UNITED STATES IN AND FOR THE NORTHERN DISTRICT OF OKLAHOMA

No. 436. Civil

EVELYN SEBER, Otherwise Known as OSHARSHA JOHN, Jimmie Powshiek and Juanita Deere, now McIntosh, Plaintiffs,

vs.

BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CREEK, STATE OF OKLAHOMA, a Municipal Corporation, H. L. Payne, County Treasurer of the County of Creek, State of Oklahoma; W. Howard Seay, County Assessor of the County of Creek, State of Oklahoma, and W. B. Key, County Clerk, County of Creek, State of Oklahoma, Defendants

COMPLAINT—Filed July 26, 1940

Come now the plaintiffs, and for cause of action or claim against the defendants above named, allege and aver:

First Cause of Action

I

That the plaintiffs are residents and citizens of the County of Creek, State of Oklahoma, and are domiciled within the Northern Judicial District of the State of Oklahoma, and are unenrolled full-blood members of the Creek or Muskogee Tribe of Indians; that this action arises under the Statutes of the United States of America, namely: the Act of Congress of June 22, 1936 (49 Stat. 1542), and the [fol. 7] Act of Congress of May 19, 1937 (50 Stat. 188), as hereinafter more fully appears. The matter in controversy

exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00).

II

That the defendant, Board of County Commissioners of the County of Creek, State of Oklahoma, is a municipal corporation, organized and existing as such under and by virtue of the laws of the State of Oklahoma; that the defendant, H. L. Payne, is duly qualified and acting County Treasurer of the County of Creek, State of Oklahoma, and the defendant, J. Clyde Staiger, is the duly qualified and acting County Assessor of Creek County, Oklahoma, and the defendant, W. B. Key, is the duly qualified and acting County Clerk of said County.

III

That Wosey John, now Deere, deceased, was the mother of these plaintiffs, and was a full-blood member of the Creek or Muskogee Tribe of Indians, duly enrolled as such opposite Roll Number 9546 of the Approved Rolls of such Tribe; that during the times hereinafter mentioned the Secretary of the Interior of the United States held in his custody a large amount of restricted Indian money belonging to her, the said Wosey John, now Deere, which funds had so accumulated to her credit from the sale of oil and gas from restricted Indian lands belonging to her, the said Wosey John, now Deere.

IV

That on or about the 11th day of December, 1915, one Martin Walder, joined by Irene Walder, his wife, in consideration of the payment of the sum of Seven-thousand-five-hundred dollars ($7,500.00) from the restricted Indian funds, aforesaid, made, executed and delivered to the Secretary of the Interior of the United States his certain deed, in writing, conveying to said Wosey John, her heirs and assigns, the following described real estate and premises, situate in Creek County, Oklahoma, to-wit:

The center Fifty (50) feet of Lot Six (6), and the Center [fol. 8] Fifty (50) feet of the South Thirty-three and 41/100 (33.41) feet of Lot Three (3), in Block Thirty-nine (39) of the Original Townsite of the City of Sapulpa.

That by the terms of said deed the said Wosey John, and her heirs were restricted from alienating and encumbering said premises without consent and approval of the Secretary of the Interior, until the 26th day of April, 1931. A true and correct copy of said deed of conveyance is attached, as Exhibit A and made a part of this complaint, as though herein set forth pro-forma.

V

That on the 24th day of March, 1920, one Alice Hughes, in consideration of the sum of Seven-thousand-five hundred dollars ($7,500.00) from the restricted Indian funds aforesaid, made, executed and delivered to the Secretary of the Interior her certain deed, in writing, conveying to the said Wosey John, her heirs and assigns, the following described premises, situate in Creek County, Oklahoma, to-wit:

The West Half (W2) of the Northwest Quarter (NW4) of the Southwest Quarter (SW4) of the Southwest Quarter (SW4), and the West Half (W2) of the South Half (S2) of the Southwest Quarter (SW4) of the Southwest Quarter (SW4) of Section Thirty-six (36), Township Eighteen (18) North, Range Eleven (11) East;

That by the terms of said deed the said Wosey John, and her heirs, were restricted from alienating or encumbering said premises, without the consent and approval of the Secretary of the Interior of the United States, until the 26th day of April, 1931. A true and correct copy of said deed of conveyance is attached hereto, as Exhibit B, and made a part of this complaint as though herein set forth pro-forma.

VI

That on the 8th day of November, 1927, the American National Bank of Sapulpa, Oklahoma, a corporation, in consideration of the payment of the sum of Ten-thousand dollars ($10,000.00) from the restricted Indian funds, aforesaid, made, executed and delivery to the Secretary of the Interior of the United States its certain deed, in writing, [fol. 9] conveying to the said Wosey John, her heirs and assigns, the following described premises situate in Creek County, Oklahoma, to-wit:

The West Half (W2) of the Southwest Quarter (SW4) of Section Twenty-seven (27), Township Eighteen (18), North, Range Eleven (11) East;

That by the terms of said deed the said Wosey John and her heirs were restricted from alienating or encumbering said premises, without the consent and approval of the Secretary of the Interior of the United States until the 26th day of April, 1931. A true and correct copy of said deed of conveyance is hereto attached, as Exhibit C, and made a part of this complaint, as though herein set forth pro-forma.

VII

That after the purchase of said lands above described the Secretary of the Interior expended large sums from the restricted Indian funds of the said Wosey Deere, aforesaid, in the erection and construction of permanent and lasting improvements upon the aforementioned and described lands and premises.

VIII

That on or about the 4th day of March, 1931, the said Wosey John, now Deere, made, executed and delivered to these plaintiffs her certain deed, in writing, thereby jointly conveying to these plaintiffs the tracts and parcels of land aforesaid, reserving, however, to the said grantor a life estate in each of such parcels and tracts of land; that said deed was duly submitted to and approved by the Honorable Secretary of the Interior of the United States.

That by the terms and conditions of said deed these plaintiffs and their heirs were forever restrained from alienating or encumbering said premises, or any part thereof, without the consent and approval of the Secretary of the Interior of the United States. A true and correct copy of said deed, with the endorsement of approval thereon is attached hereto as Exhibit D and made a part of this complaint, as though herein set forth pro-forma.

[fol. 10] IX

That thereafter, and on the 10th day of December, 1937, the said Wosey John, now Deere, made, executed and delivered to these plaintiffs her certain deed, in writing, conveying to these plaintiffs all of the right, title and interest of the said Wosey John in and to the parcels and tracts

of land aforesaid. That by the terms of such deed the plaintiffs herein and their heirs were forever restrained from alienating and encumbering said premises, or any part thereof, without the consent and approval of the Secretary of the Interior of the United States. A true and correct copy of said deed of conveyance is attached hereto, as Exhibit E, and made a part of this complaint as though herein set forth pro-forma.

X

That thereafter, and on December 16, 1937, these plaintiffs, with the consent and approval of the Secretary of the Interior, selected the parcels and tracts of land so located in Section 27 and 36 above described, as tax exempt, and a certificate of tax exemptions was duly executed and filed in the office of the County Clerk of Creek County, Oklahoma, in accordance with the provisions of Section 2 of the Act of Congress of June 30, 1936 (49 Stat. 1542) as amended by Act of Congress of May 19, 1937 (59 Stat. 188). A true and correct copy of said Certificate of Tax Exemptions is attached hereto as Exhibit F and made a part of this complaint, as though herein set forth pro-forma.

XI

Plaintiffs allege that each of the tracts and parcels of land aforesaid were Federal instrumentalities and were not subject to taxation by the County of Creek, State of Oklahoma, and its municipal sub-divisions for the tax years 1936 and 1937, by reason of the provisions of Section 2 of the Act of Congress of June 20, 1936 (49 Stat. 1542); but that notwithstanding such fact the County Assessor of said County wrongfully assessed each of such tracts for advalorem tax purposes, and caused taxes to be levied and assessed against the same for each of said years and caused such taxes to [fol. 11] be extended upon the tax rolls of said County against such respective tracts and parcels of land.

That the property so located in Block Thirty-nine (39) of the City of Sapulpa, aforesaid, was assessed for each of said years at the valuation of Twelve thousand dollars ($12,000.00) and advalorem taxes were levied against the same, and extended upon the tax rolls of said County as charges against said land, in the following amounts: For the year 1936 the sum of Eight-hundred-twenty-nine and

61/100 dollars ($829.61). For the year 1937 the sum of Nine-hundred-seventeen and 04/100 dollars ($917.04).

That the property so located in Section 36, aforesaid, was assessed for each of said years at the valuation of Two-thousand-eight-hundred dollars ($2,800.00), and advalorem taxes were levied against the same and extended upon the tax rolls of said County as charges against said land in the following amounts: For the year 1936 the sum of One-hundred-thirty-six and 87/100 dollars ($136.87); for the year 1937 the sum of One-hundred-sixty-four and 04/100 dollars ($164.04).

That the property so located in Section 27, aforesaid, was assessed for each of said years at the valuation of Seventeen-thousand-four-hundred dollars ($17,400.00), and advalorem taxes were levied against the same and extended upon the tax rolls of said County as charges against said land in the following amounts: For the year 1936 the sum of Eight-hundred-forty-eight and 80/100 dollars ($848.80); for the year 1937 the sum of Nine-hundred-ninety-three and 97/100 dollars ($993.97).

XII

That plaintiffs have at all times since the year 1931 occupied the premises so located in Section 27, aforesaid, as their home and homestead, and that such lands were not subject to taxation by the County of Creek, State of Oklahoma, and its municipal sub-divisions during the tax years 1938 and 1939, and such lands are not now, and will not in the future be subject to taxation by said County and its municipalities so long as the same is the home and house-
[fol. 12] stead of these plaintiffs, or either of these plaintiffs, or either of them, or their heirs; and so long as the plaintiffs or their heirs are restrained from alienating or encumbering the same by reason of the provisions of the Act of Congress of May 10, 1937 (50 Stat. 188), but that notwithstanding such fact the County Assessor of said County, defendant herein, wrongfully assessed said land for advalorem tax purposes for each of the years 1938 and 1939 at the valuation of Seventeen-thousand-four-hundred dollars ($17,400.00), and caused advalorem taxes to be levied against the same and caused such taxes to be extended upon the tax rolls of said County as charges against said land; that the taxes so levied against said land, and so extended

upon the tax rolls of said County for said years, are as follows: For the year 1938; the sum of Eight-hundred-ninety-three and 57/100 dollars ($893.57) for the year 1939 the sum of Nine-hundred-ninety-four and 86/100 dollars ($994.86).

XIII

That the defendants herein, by reason of the levy and assessment of said illegal and void taxes, aforesaid, asserted and claimed a lien upon said lands for the respective amounts so levied against the same for each of the years, aforesaid, with penalties thereon, at the rate of twelve per cent (12%) per annum, and the defendants threaten to cause said lands to be sold for the purpose of enforcing the collection of such illegal and void taxes, and that these plaintiffs, in order to quiet the title to their said land against said illegal and void tax lien and to avoid the accumulation of penalties and the sale of their said lands under compulsion, duly paid to the County Treasurer of Creek County, Oklahoma, defendant herein, the sum of One-thousand-six-hundred-seventy-eight and 41/100 dollars ($1,678.41) on December 15, 1936, which said amount was paid and received by the defendants in satisfaction of the illegal and void taxes assessed against the property so located in Block Thirty-nine (39) in the City of Sapulpa, and so located in Section Twenty-seven (27), aforesaid, for the *years* 1936, and that plaintiffs did, under compulsion, and duress, pay to the said County Treasurer, defendant herein, on November 14, 1939, the sum of Three-thousand-one-hundred-five and 59/100 dollars ($3,105.59), which [fol. 13] amount was paid and received by the defendant in satisfaction of the illegal and void taxes levied against the property so located in Block Thirty-nine (39) of the City of Sapulpa, aforesaid, for the year 1937, and in payment of taxes so wrongfully assessed against the property so located in Section Thirty-six (36) aforesaid, for the years 1936, 1937 and 1938, and in payment of the taxes so wrongfully assessed against the property located in Section Twenty-seven (27), aforesaid, for the years 1937-1938.

XIV

Plaintiffs further say that the taxes which have so wrongfully been levied against the West Half (W2) of the Southwest Quarter (SW4) of Section Twenty-seven (27), Town-

ship Eighteen (18) North, Range Eleven (11) East, for the year 1939, remains wholly unpaid, and that the same are illegal and void for the reasons aforesaid, but that notwithstanding such fact the defendants claim and assert that such taxes with penalties thereon are and constitute a lien upon said premises, and defendants will, unless restrained and enjoined by the judgment of this Honorable Court, continue to assert and claim a lien upon said premises for the amount of such illegal and void tax, with penalties thereon, and defendants will, unless restrained and enjoined from so doing, offer for sale and sell said lands for the purpose of enforcing the collection of said illegal and void tax claim.

XV

That the defendant, J. Clyde Staiger, as County Assessor, of said County, and the defendant, W. B. Key, as County Clerk of said County, are enjoined with the duty of preparing the tax rolls of said County; that the defendant, County Assessor has wrongfully listed the lands last above described, namely: The West Half (W2) of the Southwest Quarter (SW4) of Section Twenty-seven (27), Township Eighteen (18) North, Range Eleven (11) East, for ad valorem taxes for the year 1940, at the valuation of Seventeen-thousand-four-hundred dollars, ($17,400) and that said defendants, County Clerk and County Assessor, will, unless restrained and enjoined by the judgment of this Honorable Court extend such property upon the assessment list and [fol. 14] tax rolls of said County for the year 1940, and for subsequent years.

XVI

That the defendant, H. L. Payne, as County Treasurer of said County, is enjoined with the duty of collecting all advalorem taxes due to said County and its municipalities, and is now asserting and claiming a lien upon the lands last above described for the amount of the illegal and void taxes so assessed against the same for the year 1939, with penalties thereon, and will, unless restrained, continue to claim and assert a lien upon said lands for such illegal and void taxes and penalties, and that said defendant will, if permitted, claim and assert a lien upon said lands for such illegal and void taxes as may be levied against the same for the year 1940, and subsequent years, and will, unless restrained, offer said lands for sale for the purpose of enforc-

ing the collection of such illegal and void taxes which may be so levied against the same for the year 1940, and subsequent years.

Wherefore, plaintiffs pray for judgment against the defendant, Board of County Commissioners of the County of Creek, State of Oklahoma, for the sum of One-thousand-six-hundred-seventy-eight and 41/100 dollars ($1,678.41), with interest at the rate of six percent per annum from the 15th day of December, 1936, and for judgment against the defendant, Board of County Commissioners of the County of Creek, State of Oklahoma, for the sum of Three-thousand-one-hundred-five and 59/100 dollars ($3,105.59), with interest at the rate of six percent per annum from the 14th day of November, 1939, and plaintiffs further pray for a declaratory judgment adjudging and decreeing the lands described as the West Half (W2) of the Southwest Quarter (SW4) of Section Twenty-seven (27), Township Eighteen (18) North, Range Eleven (11) East, to be non-taxable in the County of Creek, State of Oklahoma, for the years 1939 and 1940, and decreeing the same to be non-taxable by said County and its municipalities so long as such lands shall remain the home and homestead of these plaintiffs, or either of them, or their heirs, and so long as the plaintiffs or their heirs are restrained from alienating or encumbering the same; that the taxes so assessed against said land for the year 1939, [fol. 15] and so extended upon the tax rolls of said County be decreed to be illegal and void, and that the same be cancelled and annulled; that the defendant, County Treasurer, and his successors in office, be restrained and enjoined from taking any steps for the enforcement of the collection of such illegal and void taxes; that the defendants, County Assessor and County Clerk, and their successors in office be enjoined and restrained from extending such lands upon the assessment list of said County, and from levying any taxes against the same for the year 1940, and so long thereafter as such land shall remain the homestead of these plaintiffs, or either of them, or their heirs, and so long as the plaintiffs, or their heirs, are restrained from alienating or encumbering the same, and for all other relief, legal and equitable, to which plaintiffs may be entitled in the premises, including the costs of this action.

George Jennings, Attorney for Plaintiffs, Sapulpa, Oklahoma.

[File endorsement omitted.]

EXHIBIT "A" TO COMPLAINT

22583.

Warranty Deed—Special Form.

This Indenture, made, executed and delivered this 11th day of December, 1915, by and between Martin Walter and Alene Walter, husband and wife, parties of the first part, grantors, and Wosey John, party of the second part, grantee, Witnesseth:

That for and in consideration of the sum of Seven Thousand Five Hundred and no/100 dollars ($7500.00) to them in hand paid, the receipt whereof is hereby acknowledged, from Wosey John, the Same Being Funds Held by the United States in Trust, Subject to Disbursement Under the Supervision of the Secretary of the Interior, have granted, bargained, sold and conveyed unto the said Wosey John, [fol. 16] grantee, and by these presents do hereby grant, bargain, sell and convey unto the said Wosey John, grantee, the following described real property and premises situated in Creek County, State of Oklahoma, to-wit:

Part of Lots Three (3), and Six (6), in Block Thirty-nine (39) in the City of Sapulpa, Oklahoma, more particularly described as follows: Beginning at a point on the South boundary line of Lot Six (6) Fifty (50) feet West from the Southeast corner of said Lot Six (6); thence North One Hundred and Forty (140) feet along a line parallel with the West boundary of Lots Three (3) and Six (6); thence West Fifty (50) feet along a line parallel with the South line of Lot Six (6); thence South One Hundred and *Forth* feet along a line parallel with the West boundary of Lots Three (3) and Six (6) to the South boundary of said Lot Six (6); thence East Fifty (50) feet to the place of beginning; being in area Fifty (50) feet to the place of beginning, being in area Fifty (50) x One Hundred (100) feet, together with all the improvements thereon, and appurtenances thereunto belonging, and warrant the title to the same.

To Have and to Hold said described premises, unto the said grantee, her heirs and assigns, forever, free and clear and discharged of all former grants, charges, taxes, judgments, mortgages, and other liens and incumbrances of

whatsoever nature, subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell, or other instrument affecting the land herein described, or the title thereto, executed during the lifetime of said grantee at any time prior to April 26, 1931, shall be of any force and effect or capable of confirmation or ratification, Unless Made with the Consent of and Approved by the Secretary of the Interior.

Signed and delivered on the day and date first above named.

Martin Walter, Alene Walter.

(Revenue sta.. os for $7.50 attached and cancelled.)

[fol. 17] *Acknowledgement*

The State of Oklahoma,
Creek County, ss.:

Before me, Grace Lindsey, in and for said County and State on this 4th day of December, 1915, personally appeared Martin Walter and Alene Walter, husband and wife, to me known to be the identical person who executed the within and foregoing instrument, the said Martin and Alene Walter having executed same in my presence and in the presence of as witnesses, and both of said grantors acknowledged to me that they executed the same as their free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and official seal, the day and year above set forth.

[SEAL] Grace Lindsey, Notary Public.

My commission expires February 2, 1919.

Certificate of Notice.

Department of the Interior. United States Indian Service.
Five Civilized Tribes, Muskogee, Oklahoma.

December 11, 1915.

I hereby certify that the land described in the above deed was purchased for the said Wosey John with funds Held in Trust by the United States for her benefit from funds derived from oil royalties for restricted land, inherited by the said Wosey John, by virtue of her enrollment as a full

blood citizen of the Creek Nation, opposite No. 9546 on the final approved rolls of citizens by blood of that Nation, and that said purchase was made and said deed was executed, and the same is hereby approved pursuant to the Regulations prescribed by the Secretary of the Interior under the Act of Congress approved May 27, 1908, and the Act approved August 1, 1914.

Joe H. Strain, Acting Superintendent for the Five Civilized Tribes.

[fol. 18] STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on December 13, 1915, at 2 o'clock P. M., and duly recorded in book 118 at page 410.

Gus L. Corey, County Clerk, by C. W. Maddox, Deputy.

EXHIBIT "B" TO COMPLAINT

71585.

Warranty Deed.

This Indenture, made, executed and delivered this 24th day of March, 1920, by and between Alice Hughes, a single woman, party of the first part, grantor, and Wosey Powesheik, nee John, party of the second part, grantee, Witnesseth:

That for and in consideration of the sum of Seven Thousand Five Hundred and no/100 dollars ($7,500.00) to her in hand paid, the receipt whereof is hereby acknowledged, from Wosey Powesheik, nee John.

The Same Being Funds Held by the United States in Trust, Subject to Disbursement Under the Supervision of the Secretary of the Interior, derived from oil royalties from restricted land allotted to said Wosey Powesheik, nee John, have granted, bargained, sold and conveyed unto the said Wosey Powesheik, nee John, grantee, and by these presents, do hereby grant, bargain, sell and convey unto the said Wosey Powesheik, nee John, grantee, the following described real property and premises situated in Creek County, State of Oklahoma, to-wit:

The West half (W/2) of the Northwest Quarter (NW/4) of the South West Quarter (SW/4) of the Southwest Quarter (SW/4) and the West Half (W/2) of the East Half (E/2) of the Northwest Quarter (NW/4) of the Southwest Quarter (SW/4) of the South West Quarter (SW/4) of Section Thirty-six (36), Township Eighteen (18) North, Range Eleven (11) East, containing Seven and Fifty/100 (7.50) [fol. 19] acres, more or less according to the Government survey thereof.

together with all the improvements thereon, and appurtenances thereunto belonging, and warrant the title to the same.

To Have and to Hold, said described premises, unto the said grantee, her heirs and assigns, forever, free and clear and discharged of all former grants, charges, taxes, judgments, mortgages, and other liens and incumbrances of whatsoever nature, subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell or other instrument affecting the land herein described or the title thereto, executed during the lifetime of said grantee at any time prior to April 26, 1931, shall be of any force and effect or capable of confirmation or ratification, Unless Made With the Consent or Approved by the Secretary of the Interior.

Signed and delivered on the day and date first above mentioned.

Alice Hughes.

Witnesses: —— ——; —— ——.

Revenue $4.50 attached and cancelled.

Acknowledgment

STATE OF OKLAHOMA,
Creek County, ss:

Before me, a Notary Public in and for said County and State, on this 24th day of March, 1920, personally appeared Alice Hughes, a single woman, to me known to be the identical person who executed the within and foregoing instrument, and said grantor acknowledged to me that she executed the same as her free and voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

N. D. Menifee, Notary Public.

My commission expires March 11, 1921. (Seal.)

[fol. 20] Certificate of Notice

Department of the Interior, United States Indian Service

Five Civilized Tribes, Muskogee, Oklahoma

March 24, 1920 19—.

I hereby certify that the land described in the above deed was purchased for the said Wosey Powesheik, nee John, with funds Held in Trust, by the United States, for her benefit derived from oil royalties from restricted land allotted to said Wosey Powesheik, nee John, by virtue of her enrollment as a full blood citizen of the Creek Nation, opposite No. 9546 on the final approved rolls of the citizens by blood of that Nation, and that said purchase was made and said deed was executed, and the same is hereby approved pursuant to the regulations prescribed by the Secretary of the Interior under the Act of Congress approved May 27, 1908, and the Act approved August 1, 1914.

Gabe E. Parker, Superintendent for the Five Civilized Tribes.

State of Oklahoma, County of Creek.

This instrument was filed in my office for record on March 24, 1920, 5 o'clock P. M., and duly recorded in Book 181 at page 402.

C. K. Maddox, County Clerk.

Exhibit "C" to Complaint

30873

Warranty Deed—Special Form

This Indenture, Made, executed and delivered this 8th day of November, 1927, by and between The American National Bank of Sapulpa, Oklahoma, part of the first part, grantor and Wosey John Deere, party of the second part, grantee, Witnesseth:

That for and in consideration of the sum of Ten Thousand and no/100 dollars ($10,000.00) to them in hand paid, the receipt whereof is hereby acknowledged, from Wosey John Deere, the same being funds held by the United States in

[fol. 21] Trust, subject to Disbursement under the Supervision of the Secretary of Interior, The American National Bank, of Sapulpa, Oklahoma, have granted, bargained, sold and conveyed unto the said Wosey John Deere, grantee and by these presents do hereby grant, bargain, sell and convey unto the said Wosey John Deere, grantee, the following described real property and premises situated in Creek County, State of Oklahoma, to-wit:

West Half (W2) of Southwest Quarter (SW4) of Section Twenty-seven (27), Township Eighteen (18) North, Range Eleven (11) East of the Indian Base and Meridian, containing eighty acres more or less according to the government survey thereof.

together with all the improvements thereon, and appurtenances thereunto belonging, and warrant the title to the same.

To Have and to Hold said described premises, unto the said grantee, her heirs and assigns, forever, free and clear and discharged of all former grants, charges, taxes, judgments, mortgages, and other liens and incumbrances of whatsoever nature, subject to the conditions that no lease, deed, mortgage, power of attorney, contract to sell or other instrument affecting the land herein described or the title thereto, executed during the lifetime of said grantee at any time prior to April 26, 1931, shall be of any force and effect or capable of confirmation or ratification, Unless Made With the Consent of and Approved by the Secertary of the Interior.

Signed and delivered on the day and date first above mentioned.

The American National Bank, by H. C. Hughes, Vice President, (Corp. Seal.)

Attest: G. L. Berry, Cashier.

Acknowledgment of Corporation

STATE OF OKLAHOMA,
County of Creek, ss:

Before me, the undersigned, a Notary Public in and for said County and State, on this 8th day of November, 1927,

personally appeared H. C. Hughes, to me known to be the [fol. 22] identical person who subscribed the name of the maker thereof to the foregoing instrument as its Vice President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

Roberta E. Kinnaird, Notary Public.

My commission expires 12-27-1930. (Notary Seal, Creek Co.)

Certificate of Notice

Department of the Interior

United States Indian Service, Five Civilized Tribes,

Muskogee, Oklahoma

November 8th, 1927.

I hereby certify that the land described in the above deed was purchased for a home for the said Wosey John Deere, with funds Held in Trust by the United States for her benefit derived from the sale of oil and gas royalties from her restricted allotment by virtue of her enrollment as full blood citizen of the Creek Nation, opposite No. 9546 on the final approved rolls of citizens by blood of that Nation, and that said purchase was made and said deed was executed and the same is hereby approved pursuant to the regulations prescribed by the Secretary of the Interior under the Act of Congress approved May 27, 1908, and the Act approved August 1, 1914.

A. G. McMillan, Acting Dist. Superintendent in Charge.

State of Oklahoma,
County of Creek:

This instrument was filed in my office for record on November 8, 1927, 1:45 o'clock P. M., and duly recorded in Book 355 at page 607.

Erma Morris, County Clerk, by Frances Delman, Deputy. (Seal.)

[fol. 23] EXHIBIT "D" TO COMPLAINT

1787

Warranty Deed

Department Received Apr. 6, 1931. No. 1627.

Know All Men by these Presents:

That Wosey John, now Deere, a single person, party of the first part, in consideration of the sum of one dollar and love and affection ($1.00) in hand paid, the receipt of which is hereby aeknowledged, does hereby grant, bargain, sell and convey unto Osharsha John, now Evalin Seber, Jimmie Powesheik and Juanita Deere, the legal issue of their bodies, the foll-ing described real property and premises, situate in Creek County, State of Oklahoma, to-wit:

The West Half of the Southwest Quarter of Section Twenty-seven, township eighteen (18) North, Range eleven (11) east; the W½ of NW¼ SW¼ SW¼ & W½ E½ NW¼ SW¼ SW¼ of section 36, township 18 north, range 11 east, also the center fifty (50) feet of lot six (6) and the center fifty (50) feet of the south 33.4 feet of lot three (3), all in block thirty-nine (39) of the original town of Sapulpa.

The grantor herein retaining all the rents and profits to be derived from all of the above property so long as she lives; that is, grantor retains a life estate in all of the real estate described in this deed, together with all the improvements thereon, and the appurtenances thereunto belonging, and warrant the title to the same.

To Have and to Hold said described premises, unto said grantees, their heirs and assigns, forever, free, clear and discharged of all former grants, charges, taxes, judgments, mortgages and other liens and encumbrances of whatsoever nature, subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell, or other instrument effecting the land herein described or the title thereto shall be of any force and effect, unless approved by the Secretary [fol. 24] of the Interior or the restrictions from said land are otherwise removed by operation of law.

Signed and delivered this 4th day of March, 1931.

Wosey John, now Deere.

Office of Indian Affairs. Received March 20, 1931—16906.

STATE OF OKLAHOMA,
Muskogee County, ss:

Before me, Edward Merrick, a Notary Public in and for said County and State on this 4th day of March, 1931, personally appeared Wosey John, now Deere, a single person to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above set forth.

Edward Merrick, Notary Public, Muskogee County.

My commission expires March 17, 1931. (Notary Seal.)

Department of the Interior, Office of the Secretary

Washington, April 3, 1931.

The within deed is hereby approved.

Jos. M. Dixon, First Assistant Secretary.

STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on April 6, 1931, 4 o'clock P. M., and duly recorded in Book 393, page 596.

Paul Zimmerman, County Clerk, by O. E. Allen, Deputy. (Seal.)

EXHIBIT "E" TO COMPLAINT

32990

Warranty Deed

Know All Men by these Presents:

That Wosey John now Deere, a single person, party of the first part, in consideration of the sum of one dollar and [fol. 25] love and affection ($1.00) in hand paid, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell and convey unto Osharsha John now Evalin Sebey, Jimmie Powesheik and Juanita Deere, and the legal issue of their bodies, the following described real property and

premises, situate in Creek County, State of Oklahoma, to-wit:

All of the life estate heretofore reserved in the following described property, as shown by the Warranty Deed heretofore executed on March 4, 1931, recorded in book 393, at page 596 of the County Clerk's records of Creek County, Oklahoma:

The West half of the southwest Quarter of Section twenty-seven, township eighteen (18) north, range eleven (11) east; the W½ of MW¼ SW¼ SW¼ & W½ E½ NW¼ SW¼ SW¼ of Section 36, township 18 north, range 11 east, also the center fifty (50) feet of lot six (6) and the center fifty (50) feet of the South 33.4 feet of lot Three (3), all in Block thirty-nine (39), of the original town of Sapulpa.

together with all the improvements thereon, and the appurtenances thereunto belonging, and warrant the title to the same.

To Have and to Hold said described premises unto said grantees, their heirs, and assigns, forever, free, clear, and discharged of all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature, subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell, or other instrument affecting the land herein described or the title thereto shall be of any force and effect, unless approved by the Secretary of the Interior of the restrictions from said land are otherwise removed by operation of law.

Signed and delivered this 10th day of December, 1937.

Wosey John now Deere.

[fol. 26] *Acknowledgment*

STATE OF OKLAHOMA,
Creek County, ss:

Before me, a notary public in and for said County and State, on this 10th day of December, 1937, personally appeared Wosey John now Deere, a single person to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

Witness my hand and official seal, the day and year above set forth. Kate Henry, Notary Public. My commission expires September 28, 1941. State of Okla. Sapulpa. (Notary Seal).

Certificate of Notice

Department of the Interior

United States Indian Service

Five Civilized Tribes

Muskogee, Oklahoma,
December 10, 1937.

I hereby certify that the land described in the above deed was purchased for Osharsha John now Evalin Seber, Jimmie Powesheik, and Juanita Deere, to be held in trust by the United States of America for their benefit, by virtue of their being full-blood Creek Indians, not enrolled, and that said purchase was made and said deed was executed and the same is hereby approved pursuant to the Act of Congress approved May 27, 1908 (35 Stat. L. 312), and the regulations prescribed thereunder by the Secretary of the Interior.

A. W. Landman, Superintendent for the Five Civilized Tribes.

Revenue Stamp .50c attached and cancelled.

STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on December 10, 1937, 1:10 o'clock P. M. and duly recorded in Book 449 page 71.

Huber Hughes, County Clerk, by Leota Wetzel, Deputy. (Seal.)

[fol. 27] EXHIBIT "F" TO COMPLAINT

Certificate

Designating Property Exempt from Taxation

Date December 16, 1937.

Place Sapulpa, Okla.

Pursuant to Section 2 of the Act of June 20, 1936 (49 Stat., 1542), as amended by the Act of May 19, 1937 (Pub-

lic 96, 75th Congress, First Session), the following designated restricted Indian lands purchased prior to May 19, 1937, out of the trust or restricted funds of Osharsha John, now Evaline Seber, Jimmie Powesheik, and Juanita Deere, a minor. An Indian of the Creek (Tribe-Band-Nation) are hereby selected and designated as a tax exempt homestead to remain non-taxable until otherwise directed by Congress.

Description

W½ SW Sec. 27, Twp. 18N, Range 11 E. & W½ NW SW SW & W½ E½ NW SW SW Sec. 36, Twp. 18 N. Range 11 E, Creek County, Okla.

Area 87½ acres (if agricultural and/or grazing lands) Cost—(if village, town *of* city property).

Osharsha John now Evaline Seber, Jimmie Powesheik, Juanita Deere, —— ——, Signature of Applicant.

A. M. Landman, Superintendent of Five Civilized Tribes, for Juanita Deere, Minor, Department of the Interior, Washington, D. C. ——— Unreadable.

Date March 24, 1938.

Approved: Oscar L. Chapman, Assistant Secretary. Sig. WW.

* To be designated by the Indian. The Superintendent to make such designation for all minors; when the Indian is [fol. 28] non compos mentis; and in those cases where the Indian fails to designate within a reasonable time.

5379.

Received December 27, 1937. Five Civilized Tribes. Office of Indian Affairs. Received December 31, 1937. 79539.

Received April 9, 1938. 6163. Supt. Five Civ. Tribes.

STATE OF OKLAHOMA,
County of Creek:

This instrument was filed in my office for record on April 12, 1938, 4 o'clock P. M. and duly recorded in Book 449, page 411.

Huber Hughes, County Clerk, by Leota Wetzel, Deputy. (Seal.)

State of Oklahoma, County of Creek, Sapulpa, Oklahoma. Filed This 2 day of August, 1940. W. B. Key, County Clerk. By J. H. Simpson, Deputy.

In United States District Court

Order Authorizing Amendment of Complaint—Filed November 4, 1940

Now, on this 4th day of November, 1940, It Is Ordered and Adjudged that the plaintiffs be permitted to amend their complaint herein by interlineation in the following manner:

By striking that portion of Paragraph 10 on page 5 of said complaint, which reads as follows:

"In accordance with the provisions of the Act of Congress of May 10, 1928 (45 Stat. L. 495)".

And by inserting in lieu thereof the following:

"In accordance with the provisions of Section 2 of the Act of Congress of June 20, 1936 (49 Stat. 1542), as amended by the Act of Congress of May 19, 1937 (50 Stat. 188)."

Royce H. Savage, District Judge.

[File endorsement omitted.]

[fol. 29] In United States District Court

Defendants' Motion to Dismiss Bill of Complaint—Filed August 20, 1940

Come now the Board of County Commissioners of the County of Creek, State of Oklahoma; H. L. Payne, County Treasurer of Creek County, Oklahoma; J. Clyde Staiger, County Assessor of Creek County, Oklahoma, and W. B. Key, County Clerk of Creek County, Oklahoma, defendants in the above styled and numbered cause, appearing specially for the purpose of this Motion, and this Motion only, and move the court to dismiss Plaintiffs' Bill of Complaint filed herein for the following reasons, to-wit:

1

That this court has no jurisdiction of the parties in this action, for the reason that there is no diversity of citizenship.

2

That the complaint does not state facts sufficient to constitute a valid cause of action at law or in equity against said defendants, Board of County Commissioners of Creek County, Oklahoma; H. L. Payne, County Treasurer, Creek County, Oklahoma; J. Clyde Staiger, County Assessor, Creek County, Oklahoma, and W. B. Key, County Clerk, Creek County, Oklahoma, or against either of them.

3

That it appears on the face of said Complaint that the ground of federal jurisdiction relied on therein is that a federal question is involved, but said complaint clearly shows that in fact there is no such question actually involved and, therefore, this court is without jurisdiction.

4

That the Complaint shows on its face that if a cause of action ever accrued wherein said taxes were wrongfully collected by the County Treasurer of Creek County, Oklahoma, that said action could and should have been maintained by said plaintiffs by paying said taxes under protest and bringing suit within the time prescribed by statute, or filing an affidavit of erroneous assessment with the [fol. 30] Board of Equalization and County Treasurer of Creek County, as prescribed by statute, or that said action could have been maintained at any time within three years after payment of said taxes, which time expired sometime before the bringing of this action.

5

That the federal acts under which the plaintiffs assert their right to recover said taxes and preventing said lands being placed upon the tax rolls of Creek County and same assessed as other lands therein located belonging to citizens of the State of Oklahoma are unconstitutional, void, and of no further force and effect.

That the Federal Acts of Congress relied upon by the plaintiffs herein to support their cause of action against these defendants, even though declared constitutional, have no application to the lands involved in this cause of action.

Wherefore, defendants pray that the whole of the Complaint be dismissed and that said defendants may be hence dismissed with their costs in their behalf incurred, and for such other and further relief as the court may deem just.

Mac Q. Williamson, Attorney General, by Houston E. Hill, Assistant Attorney General; Everett S. Collins, County Attorney, Creek County, Oklahoma; Kenneth Hughes, Assistant County Attorney, Creek County, Oklahoma, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISMISS—Filed July 21, 1941

This cause came on to be heard on the 30th day of September, 1940, upon the motion of the defendants to dismiss plaintiff's complaint; the parties appearing by their respective attorneys of record, and the court having heard [fol. 31] the argument, permitted the filing of briefs in support of opposition to such motion.

And now, on this 9th day of May, 1941, the court being fully advised in the premises, and on consideration thereof, finds that said motion should be, and the same is hereby overruled, to which order of the court the defendants, and each of them, except, and their exceptions are by the court allowed.

And for good cause shown, the defendants are granted an extension of thirty (30) days from this date within which to answer herein.

(s) F. E. Kennamer, Judge.

Order Approved and Copy Waived:

George H. Jennings, Attorney for Plaintiffs. Everett Collins, County Attorney of Creek County, Oklahoma, By: Everett S. Collins. Mac Q. Williamson, Attorney General, By: Houston Bus Hill.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

JOINT MOTION FOR SUBSTITUTION OF PARTY—Filed May 26, 1941

Comes now the plaintiffs and defendants in the above numbered and styled cause and respectfully show to the court:

That the term of office of the defendant, J. Clyde Staiger, as County Assessor of the County of Creek, State of Oklahoma, expired on the 7th day of January, 1941, and that he was succeeded in such office by one W. Howard Seay, who is now the duly elected, qualified and acting County Assessor of said County; and that the said W. Howard Seay, as County Assessor of Creek County, State of Oklahoma, should be substituted as a party defendant in the above numbered and styled cause in lieu and in the stead [fol. 32] of the defendant, J. Clyde Staiger, as such County Assessor.

Wherefore, plaintiffs and defendants jointly move the court to make and enter its order herein substituting as a party defendant herein, the said W. Howard Seay, County Assessor of Creek County, Oklahoma, in lieu and in the stead of the said J. Clyde Staiger, as such County Assessor.

George Jennings, Attorney for Plaintiffs. Everett S. Collins, County Attorney of Creek County, State of Oklahoma—Attorney for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

WAIVER OF NOTICE OF HEARING ON MOTION FOR SUBSTITUTION—Filed May 26, 1941

Comes now W. Howard Seay, the duly elected, qualified and acting County Assessor of the County of Creek, State of Oklahoma, and hereby accepts service of a copy of the above and foregoing joint motion for substitution, and agrees that an order be entered substituting him in his official capacity as a party defendant in the above numbered and styled cause, in accordance with the prayer of the foregoing motion.

W. Howard Seay, County Assessor, County of Creek, State of Oklahoma.

[File endorsement omitted.]

In United States District Court

Order Substituting Party—Filed May 26, 1941

This cause comes on to be heard on this 26th day of May, 1941, upon the joint petition of plaintiffs and defendants, for the substitution of W. Howard Seay, County Assessor of the County of Creek, State of Oklahoma, in lieu and in the stead of J. Clyde Staiger, County Assessor of said County, and upon the waiver of notice and consent of said [fol. 33] W. Howard Seay to said order of substitution, and the court being advised, finds:

That the term of office of the defendant, J. Clyde Staiger, as County Assessor of the County of Creek, State of Oklahoma, expired on the 7th day of January, 1941, and that he was succeeded in office by W. Howard Seay, who is now the duly qualified and acting County Assessor of said County.

It Is Therefore Ordered, Adjudged and Decreed that W. Howard Seay, County Assessor of the County of Creek, State of Oklahoma, be, and he is hereby substituted as a party defendant in the above numbered and styled cause in lieu and in the stead of the said J. Clyde Staiger, as such County Assessor.

(s) F. E. Kennamer, Judge.

[File endorsement omitted.]

In United States District Court

Defendants' Answer—Filed June 5, 1941

Come now the defendants in the above styled and numbered cause and still objecting to the jurisdiction of this court file this answer to the Complaint filed herein and deny each any every material allegation therein contained, except such as are hereinafter specifically admitted.

1

Defendants admit the allegations under paragraph one of the Complaint to the effect that the plaintiffs are residents and citizens of Creek County, Oklahoma, and are

domiciled within the Northern Judicial District of the State of Oklahoma, and are unenrolled full-blood members of the Creek or Muskogee Tribe of Indians; that the matter in controversy exceeds, exclusive of interest and costs, the sum of $3000.00, but defendants deny that the cause of action, if any, set forth in plaintiff's Complaint arose under the Statutes of the United States of America, [fol. 34] namely, the Act of Congress of June 22, 1936 (49 St. 1542), and in the Act of May 19, 1937 (50 St. 188).

2

Defendants admit that the allegations under paragraph two of the Complaint to the effect that the Board of County Commissioners of Creek County is a municipal corporation under the laws of the State of Oklahoma; that the defendant, H. L. Payne, is the duly qualified and acting County Treasurer of Creek County, and that the defendant, W. Howard Seay, is the duly qualified and acting County Assessor of Creek County, and that the defendant, W. B. Key, is the duly qualified and acting Clerk of Creek County, Oklahoma.

3

Defendants admit the allegations in paragraph three of the Complaint that Woosie John (now Deere, deceased) was the mother of the plaintiffs herein and was a full-blood member of the Creek or Muskogee Tribe of Indians, duly enrolled as such, opposite Roll No. 9546 of the Approved Rolls of such Tribe, but as to the remaining allegations thereof defendants are without knowledge or information to form a belief.

4

Defendants admit the allegations under paragraph four of said Complaint.

5

Defendants admit the allegations in paragraph five of the Complaint.

6

Defendants admit the allegations in paragraph six of the Complaint.

7

Defendants deny the allegations in paragraph seven of the Complaint to the effect that the Secretary of Interior expended large sums of Restricted Indian Funds belonging to Woosie *Deer* in the erection and construction of permanent and lasting improvements upon the above described lands and premises.

[fol. 35] 8

Defendants admit the allegations in paragraph eight of the Complaint.

9

Defendants admits the allegations in paragraph nine of the Complaint.

10

Defendants admit the allegations in paragraph nine of the plaintiffs herein on December 16, 1937, by and with the consent and approval of the Secretary of Interior attempted to select the parcels and tracts of land above described in Sections 27 and 36 in Creek County, as *tax exempt* property, and a purported certificate of tax exemption was duly executed and filed in the office of the County Clerk of Creek County, Oklahoma. But defendants expressly deny that said certificate of tax exemption was filed in accordance with the provisions of Section 2 of the Act of Congress of June 20, 1936 (49 St. 188). Defendants admit that Exhibit F is a true and correct copy of the original certificate of tax exemption therein described.

11

Defendants deny the allegations in paragraph 11 of the complaint to the effect that the lands therein described were federal instrumentalities and were not subject to taxation by Creek County, Oklahoma, and its municipal subdivisions for the tax years 1936 and 1937, under the provisions of Section 27 of the Act of Congress of June 20, 1936 (49 St. 1542).

Defendants admit that the county assessor of said county assessed each of said tracts of land described in plaintiff's complaint for ad valorem tax purposes and caused taxes

to be levied and assessed against the same for each of said years and caused such taxes to be extended upon the tax roll of said county against such respective tracts and parcels of lands, but deny that said county assessor wrongfully assessed such tracts of land for ad valorem tax purposes. Defendants admit the remaining allegations in paragraph eleven of said Complaint.

[fol. 36] 12

Defendants deny that the allegations in paragraph twelve of the Complaint to the effect that plaintiffs have since 1931 occupied the 80 acres located in Section 27 as their home and homestead, and further deny that such lands were not subject to taxation by Creek County and its municipal subdivisions during the tax years of 1938 and 1939.

Defendants further deny that such lands will not be subject to taxation by the said Creek County and its municipal subdivisions after 1939, so long as plaintiffs or the heirs are located upon said lands, as provided by the Act of Congress of May 19, 1937 (50 St. 188).

Defendants further deny that said county assessor of Creek County wrongfully assessed said lands for ad valorem tax purposes for the years 1938 and 1939, at the valuation of $17,400, but do admit that the taxes so levied and extended upon the rolls of said Creek County against said lands are as follows:

For the year 1938	$893.57
For the year 1939	994.86

13

Defendants admit the allegations in paragraph thirteen of the Complaint that by reason of the levy and assessment of such ad valorem taxes against said lands above described, defendants asserted and claimed a lien upon said lands for the respective amounts so levied against the same for the years aforesaid, with penalties thereon, at the rate of 12% per annum, but deny that said ad valorem taxes were illegally levied and assessed against said lands.

Defendants deny that they have threatened to cause said lands to be sold for the purpose of enforcing collection of said taxes hereinabove described; and further deny that said plaintiffs, in order to quiet title to their said lands

against said tax lien and to avoid the accumulation of penalties and the sale thereof under compulsion paid the county treasurer of Creek County, Oklahoma, the sum of $1678.41 on December 15, 1936. Defendants, however, state the facts to be that on December 15, 1936, Woosie John [fol. 37] (now Deere, deceased), mother of the plaintiffs herein, voluntarily paid taxes upon the lands described in the plaintiff's complaint and more particularly described as follows:

On the lots located in the City of Sapulpa, upon which there is a brick building, taxes paid	$ 829.61
On the 80 acres in Section 27	848.80
A refund on these taxes was made on May 12, 1937, in the amount of	121.08
Net Amount of Taxes Paid	$1557.33
On 7½ acres in Section 36, taxes paid	136.87

Defendants further state that the above taxes were not paid under protest.

Defendants admit that plaintiffs herein paid the ad valorem taxes, including penalties, upon the lands described in plaintiff's Complaint and more particularly hereinafter described for the years hereinafter set forth:

1937 Taxes on:

The lots in the City of Sapulpa, upon which is located a brick building	$ 917.04
The 80 acres in Section 27	993.97
The 7½ acres in Section 36	164.04
Total Taxes Paid, Including Penalties	$2075.05

1938 Taxes on:

The 80 acres in Section 27, taxes paid	$ 789.67
The 7½ acres in Section 36, taxes paid	143.80
Total Taxes, Including Penalties	$ 933.47

Defendants deny that plaintiffs paid said taxes under compulsion and duress, and further deny that said payment was made for taxes illegally levied and assessed against the

properties above described, and defendants further deny that said taxes were paid under protest.

[fol. 38]

14

Defendants deny that the allegations in paragraph fourteen of the Complaint to the effect that the taxes which had been levied against the west half of the SW¼ of Section 27, Township 16 North, Range 11 East, in Creek County for the year 1939 were illegally levied and assessed against said lands, but defendants admit that the taxes for said years are wholly unpaid.

Defendants admit that unless said taxes are paid within the time prescribed by the laws of the State of Oklahoma said lands will be sold pursuant to State laws for the collection of said taxes.

15

The time having expired in 1940 for the county to sell lands for advalorem taxes, said restraining order therein prayed for is no longer necessary but defendants state that they should not be interfered with in the future to sell said lands for delinquent ad valorem taxes in the event said taxes are not paid before the next delinquent ad valorem tax sale takes place in Creek County.

16

Defendants admit the allegations in paragraph sixteen of the Complaint to the effect that the defendant, county treasurer, is enjoined with the duty of collecting all ad valorem taxes in said county and its municipalities, and is now asserting and claiming a lien upon the lands above described for the amount of delinquent ad valorem taxes levied and assessed against the same for the year 1939, with penalties thereon, but deny that said ad valorem taxes have been illegally levied and assessed against said lands. Defendants state that the time for the sale of lands for delinquent ad valorem taxes for 1940 has expired but state that plaintiffs herein should not interfere with the defendant's duty to proceed with the collection of delinquent ad valorem taxes for the year 1939 upon the lands described in plaintiff's petition.

Defendants further deny that the plaintiffs are entitled to the judgment and relief prayed for in paragraph sixteen of plaintiff's complaint.

[fol. 39] 17

Further answering, if same be necessary, defendants deny that the lands involved herein are such lands as are referred to in Section 2 of the Act of Congress of June 20, 1936 (Vol. 49 U. S. St. at Lg. Art. 1, Ch. 62; page ——), or its amendment by Congress on May 19, 1937 (50 St. at Lg. 188), for the reason that said lands were not purchased with the Restricted Indian Funds by the plaintiffs herein, but the deeds attached to plaintiff's complaint show on their face the consideration to be $1.00 and love and affection," which is nothing more than a "gift inter vivo" and hence there can be no federal question involved.

Defendants further state that this court has no jurisdiction of the parties in this action as there is no diversity of citizenship, for the reason that the plaintiffs, as well as the defendants, are citizens of Creek County, and of the State of Oklahoma.

18

Defendants further state that the complaint does not state facts sufficient to constitute a valid cause of action at law or in equity against said defendants or either of them.

19

Defendants further state that the complaint shows on its face that if a cause of action ever accrued wherein said taxes were wrongfully collected by the county treasurer of Creek County, Oklahoma, that said action could and should have been maintained by said plaintiffs by paying said taxes under protest and bringing suit within the time prescribed by statute or by filing affidavit of erroneous assessment with the Board of Equalization and county treasurer of Creek County, as prescribed by the statutes of the State of Oklahoma, or that said action could have been maintained at any time within three years after payment of said taxes, which time expired before the bringing of this action.

[fol. 40] 20

Defendants further state that Exhibit F attached to plaintiff's Complaint designating property exempt from

taxation is made pursuant to the Act of Congress of June 20, 1936, as amended by the Act of May 20, 1937, "attempts to exempt from taxation as a homestead the 80 acres situated in Section 27 and the 7½ acres situated in Section 36 of Creek County," but deny that said purported instrument exempts said lands from taxation by reason of the Acts of June 20, 1936, as amended by the Act of May 20, 1937, for the reason that said lands were not purchased with the Restricted Indian Funds by the plaintiffs herein, but in truth and in fact were a gift to plaintiffs from their mother, Woosie John (now Deere, deceased).

Wherefore, defendants having fully answered, pray the court for judgment under which plaintiffs shall be adjudged nothing by reason of their suit and under which the defendants, and each of them, shall be adjudged their costs and all other and different relief in law or in equity, to either, to which they are entitled.

Mac Q. Williamson, Attorney General, By Houston Bus Hill, Assistant Attorney General. Everett S. Collins, County Attorney, Creek Co., Okla.; Kenneth Hughes, Assistant County Attorney, Creek County, Oklahoma, Attorneys for Defendants.

I have this day mailed copy of this answer to George H. Jennings, Attorney for Plaintiffs.

Houston Bus Hill, Asst. Atty. Genl., Attorney for Defendants.

[File endorsement omitted.]

[fol. 41] In United States District Court

Agreed Statement of Fact—Filed July 14, 1941

It Is Stipulated and Agreed by and between the plaintiffs and defendants in the above numbered and styled cause that the following statement of facts constitute a full, correct and complete statement of the facts upon which this cause should be submitted to and determined by the Honorable Trial Court, to-wit:

I

That the plaintiffs are now, and were at the time of the filing of this action, residents and citizens of the County of

Creek, State of Oklahoma, domiciled within the No-thern Judicial District of said State, and are unenrolled full-blood members of the Creek or Muskogee Tribe of Indians, and that the matter in controversy exceeds, exclusive of interest and costs, the sum of Five-thousand dollars ($5,000.00).

II

That the defendant, Board of County Commissioners of the County of Creek, State of Oklahoma, is a municipal corporation, organized and existing under the laws of the State of Oklahoma; that the defendant, H. L. Payne, is the duly qualified and acting County Treasurer of Creek County, State of Oklahoma, and the defendant, W. Howard Seay, is the duly qualified and acting County Assessor of said County, and W. B. Key is the duly qualified and acting County Clerk of said County.

III

That Wosey John, now Deere, deceased, was the mother of the plaintiffs, and was a full-blood member of the Creek or Muskogee Tribe of Indians, duly enrolled as such opposite roll Number 9546 of the approved rolls of said Tribe, and that at the dates mentioned in the complaint the Secretary of the Interior of the United States held in his custody a large amount of restricted Indian money belonging to her, the said Wosey John, now Deere, which money had accumulated to her credit from the sale of oil and gas from restricted Indian lands belonging to her, the said Wosey John, now Deere.

[fol. 42] IV

That on the 11th day of December, 1915, the Secretary of the Interior invested the sum of Seven-thousand-five hundred dollars ($7,500.00) from the restricted funds so held by him to the credit of Wosey John, now Deere, in the purchase in her behalf of the following described lands, situate in Creek County, Oklahoma, to-wit:

The center Fifty (50) feet of Lot Six (6), and the center Fifty (50) feet of the South Thirty-three and 41/100 (33.41) feet of Lot Three (3), Block Thirty-nine (39), of the Original Townsite of the City of Sapulpa.

That the instrument attached to the complaint as Exhibit "A" thereto is a true and correct copy of the deed

of conveyance so taken by the Secretary of the Interior at the time of the purchase of such property.

V

That on March 24, 1920, the Secretary of the Interior invested the sum of Seven-thousand-five-hundred dollars ($7,500.00) from the restricted funds so accumulated to the credit of Wosey John, now Deere, in the purchase in her behalf of the following described premises, situate in Creek County, Oklahoma, to-wit:

The West Half (W2) of the Northwest Quarter (NW4) of the Southwest Quarter (SW4) of the Southwest Quarter (SW4), and the West Half (W2) of the East Half (E2) of the Northwest Quarter (NW4) of the Southwest Quarter (SW4) of the Southwest Quarter (SW4) of Section Thirty-six (36), Township Eighteen (18) North, Range Eleven (11) East;

That the instrument attached to the complaint as Exhibit "B" thereto is a true and correct copy of the deed of conveyance so taken by the Secretary of the Interior at the time of the purchase of such property.

VI

That on December 8, 1927, the Secretary of the Interior invested the sum of Ten thousand dollars ($10,000.00) from the restricted funds so accumulated to the credit of Wosey [fol. 43] John, now Deere, in the purchase in her behalf of the following described lands, situate in Creek County, Oklahoma, to-wit:

The West Half (W2) of the Southwest Quarter (SW4), Section Twenty-seven (27), Township Eighteen (18) North, Range Eleven (11) East;

That the instrument attached to the complaint as Exhibit "C" thereto is a true and correct copy of the deed of conveyance so taken by the Secretary of the Interior at the time of the purchase of such property.

VII

That after the purchase of said lands the Secretary of the Interior expended large sums from the restricted Indian funds of the said Wosey John, now Deere, in the erec-

tion and construction of permanent and lasting improvements upon the above described lands and premises.

VIII

That on March 4, 1931, the said Wosey John, now Deere, in consideration of love and affection, made, executed and delivered to the plaintiffs her certain deed, in writing, thereby jointly conveying to the plaintiffs the above described tracts and parcels of land above described, preserving, however, to the said grantor a life estate in each of such properties and tracts of land; that said deed was duly submitted to and approved by the Secretary of the Interior of the United States on April 3, 1931. That no restricted or trust funds of the plaintiffs herein were used in the purchase of said lands, or the procurement thereof.

That the instrument attached to the compiaint as Exhibit "D" thereto is a true and correct copy of the deed of conveyance so made by Wosey John, now Deere, as aforesaid, as plead in paragraph VIII, of the complaint.

IX

That on December 10, 1937, the said Wosey John, now Deere, in consideration of love and affection made, executed and delivered to plaintiffs her certain deed, in writing, jointly conveying to the plaintiffs all of the right, title and [fol. 44] interest of the said Wosey John, now Deere, in and to the parcels and tracts of land above described. That no restricted or trust funds of the plaintiffs herein were used in the purchase of said lands, or the procurement thereof.

That the instrument attached to the Complaint as Exhibit "E" thereto is a true and correct copy of the deed of conveyance so made by the said Wosey John, now Deere, as plead in Paragraph IX of the Complaint.

X

That on December 16, 1937, plaintiffs, with the consent and approval of the Secretary of the Interior, executed the Certificate plead in Exhibit 10 of the Complaint, and that such Certificate was formally approved by the Secretary of the Interior on March 24, 1938, and the same was filed in the office of the County Clerk of Creek County, Oklahoma, on April 12, 1938; that the instrument plead as Exhibit "F" to the Complaint herein is a true and correct copy of the

original Certificate described in Paragraph X of the Complaint.

XI

That the County Assessor of Creek County, Oklahoma, assessed each of the above mentioned and described tracts of land for advalorem tax purposes in Creek County, Oklahoma, and for each of the tax years 1936 and 1937, and caused advalorem taxes to be levied and assessed against the same for each of said years, and caused such advalorem taxes to be extended upon the tax rolls of said County against such respective lands for each of said years, as follows:

(a) That the property above described as located in Block Thirty-nine (39), of the City of Sapulpa, was assessed for each of said tax years at the valuation of Twelve-thousand dollars ($12,000) and advalorem taxes in the amount of Eight-hundred-twenty-nine and 61/100 dollars ($829.61) were levied and assessed against the same and extended upon the tax rolls of said County for the tax year 1936, and advalorem taxes in the amount of Nine-hundred-seventeen [fol. 45] and 04/100 dollars ($917.04) were levied and assessed against the same and extended upon the tax rolls of said County for the year 1937.

(b) That the property above described as located in Section Thirty-six (36), aforesaid, was assessed for each of said tax years at the valuation of two-thousand-eight-hundred dollars ($2800.00), and advalorem taxes in the amount of One-hundred-thirty-six and 87/100 ($136.87) for the year 1936, and advalorem taxes in the amount of One-hundred-sixty-four and 04/100 dollars ($164.04) were levied and assessed against the same and extended upon the tax rolls of said County for the year 1937.

(c) That the property above described as located in Section Twenty-seven (27), aforesaid, was assessed for each of said tax years at the valuation of Seventeen-thousand-four-hundred dollars ($17,400), and advalorem taxes in the amount of Eight-hundred-forty-eight and 80/100 dollars ($848.80) for the year 1936, and advalorem taxes in the amount of Nine-hundred-ninety-three and 97/100 dollars ($993.97) for the year 1937, were levied and assessed against the same and extended upon the tax rolls of said County for the year 1937.

XII

That the plaintiffs have at all times since the year 1931 occupied the Eighty (80) acre tract located in Section Twenty-seven (27), aforesaid, as their home and homestead. That such lands were assessed for advalorem tax purposes in Creek County for the years 1938, 1939 and 1940 at the valuation of Seventeen-thousand-four-hundred dollars ($17,400.00), and that the County Assessor of said County caused advalorem taxes to be levied against such lands for each of said years, and caused such taxes to be extended upon the tax rolls of said county; that the respective amounts of taxes so levied against said lands for said years and so extended upon the tax rolls of said County against the same, are: For the year 1938, the sum of Eight-hundred-ninety-three and 57/100 dollars ($893.57); for the year 1939, the sum of Nine-hundred-ninety-four and 86/100 dollars ($994.86); for the year 1940, the sum of Eight-hundred-seventy and 54/100 dollars ($870.54).

[fol. 46] That the seven and one-half (7½) acre tract of land located in Section Thirty-six (36), aforesaid, was assessed for advalorem tax purposes in Creek County for the years 1938, 1939 and 1940 at the valuation of Two-thousand-eight-hundred dollars ($2,800.00), and that the County Assessor of said County caused advalorem taxes to be assessed against such lands for each of said years, and caused such taxes to be extended upon the tax rolls of said county; that the respective amounts of the taxes so levied against said lands for said years, and so extended upon the tax rolls of said County against the same, are: For the year 1938, the sum of One-hundred-forty-three and 80/100 dollars ($143.80); for the year 1939, the sum of One-hundred-sixty and 93/100 dollars ($160.93); for the year 1940, the sum of One-hundred-thirty-nine and 14/100 dollars ($139.14).

XIII

That on December 15, 1936, the defendants caused to be paid to the County Treasurer of Creek County the amount of taxes which had levied and assessed against the properties located in Block 39 of the City of Sapulpa, aforesaid, for the year 1936, and the property located in Section Twenty-seven (27), aforesaid, for the year 1936, with penalties thereon; and that such amount was received by said

defendant in satisfaction and payment of the taxes which had been so levied and assessed against such properties for said year, with penalties thereon.

That on November 14, 1939, the plaintiffs paid to the County Treasurer of Creek County the amount of taxes, with penalties thereon, which had been levied and assessed against the property located in Block Thirty-nine (39) of the City of Sapulpa, aforesaid, for the year 1937, and the taxes, with penalties thereon, which had been levied against the property located in Section Thirty-six (36), aforesaid, for the years 1936, 1937 and 1938, and the taxes, with penalties thereon, which had been levied against the property located in Section Twenty-seven (27), aforesaid, for the years 1937 and 1938; and that such money was received by said defendant in satisfaction and payment of such taxes against such properties, for said respective years, with penalties thereon.

[fol. 47] That on January 8, 1941, the plaintiffs paid to the County Treasurer of Creek County two-thirds of the amount of taxes, with penalties thereon, which had been levied against the property located in Section Thirty-six (36), aforesaid, for the years 1939 and 1940, and two-thirds of the taxes, with penalties thereon which had been levied against the property located in Section Twenty-seven (27), aforesaid, for the year 1939; and that such money was received by said defendant in satisfaction and payment of such proportionate part of such respective taxes, with penalties thereon.

That the amounts so paid by plaintiffs on said respective dates, are as follows:

Taxes Paid on December 15, 1936

Taxes levied for year 1936 on lots located in Block 39, City of Sapulpa	$ 829.61
Taxes levied for year 1936 on 80 acres in Section 27	848.80
Total taxes paid	$1,678.41
A refund was made on these taxes on May 12, 1937, in the amount of	121.08
Net amount paid on December 15, 1936	$1,557.33

Taxes Paid on November 14, 1939

Taxes levied for year 1936 on 7½ acre tract in Section 36, with penalties	$ 171.08
Taxes levied for year 1937 on 7½ acre tract in Section 36, with penalties	196.84
Taxes levied for year 1937 on Lots, Block 39, City of Sapulpa, with penalties	917.04
Taxes levied for year 1937 on 80 acre tract in Section 27, with penalties	1,192.76
Taxes levied for year 1938 on 7½ acre tract in Section 36, with penalties	156.78
Taxes levied for year 1938 on 80 acre tract in Section 27, with penalties	974.01
Total taxes paid on November 14, 1934	$3,608.51

[fol. 48] Taxes Paid on January 8, 1941

Two-thirds of taxes levied for year 1939 on 7½ acre tract located in Section 36, with penalties	117.76
Two-thirds of taxes levied for year 1939 on 80 acre tract located in Section 27	663.24
Two-thirds of taxes levied for year 1940 on 7½ acre tract located in Section 36	92.76
Total taxes paid on January 8, 1941	$ 873.76

That the defendants asserted and claimed a lien upon each of the respective tracts aforesaid for the respective amounts so levied against such lands for the years aforesaid, with penalties thereon at the rate of twelve percent (12%) per annum, and that if such taxes, with penalties accrued, had not been paid, the defendants would have advertised and sold such lands for the purpose of paying the respective amounts so due, with penalties thereon, under the provisions of the Statutes of the State of Oklahoma providing for the sale and resale of real estate for the collection of delinquent ad valorum taxes.

That the plaintiffs did not, at the time of paying the respective amounts of taxes, as hereinbefore set forth, give notice to the County Treasurer that such taxes were being paid under protest in the manner provided by Section 12,-665, Okla. Stat. 1931.

XIV

That the defendants now assert and claim a perpetual lien upon the tracts above described for the respective amounts of taxes so levied against the same for the years above mentioned which remain unpaid, and penalties are being added thereto at the rate of twelve percent (12%) per annum; and that unless such taxes, with penalties, are paid, that the defendants will offer such lands for sale and will sell the same for the purpose of collecting such taxes in the manner provided by the statutes of the State of Oklahoma relating to sale and resale of real estate for the collection of delinquent taxes.

[fol. 49] XV

That the defendant, W. Howard Seay, as County Assessor of said County, and the defendant, W. B. Key, as County Clerk of said County, are enjoined with the duty of preparing the tax rolls of said County, and that said County Assessor has listed the 80 acre tract located in Section 27, aforesaid, for ad valorem tax purposes in Creek County for the year 1941, at the valuation of Seven-thousand-five-hundred dollars ($7,500.00), and has listed the 7½-acre tract located in Section 36, aforesaid, for ad valorem tax purposes in said County for the year 1941, at the valuation of One-thousand-two-hundred dollars ($1,200.00), and that the defendant, County Assessor and County Clerk, intend to and will, unless restrained from so doing, cause ad valorem taxes to be assessed against said lands for the year 1941 at the valuations aforesaid, and, will cause such taxes to be extended upon the tax rolls of Creek County against such respective tracts of lands; and that such County Assessor and County Clerk will cause such lands to be listed and assessed in the future for ad valorem tax purposes in said County, and will cause taxes to be levied against the same unless prevented from so doing by the judgment of this Honorable Court.

XVI

That the defendant, H. L. Payne, as such County Treasurer, is enjoined with the duty of collecting all ad valorem taxes due to Creek County, and its municipal sub-divisions of government, and is now asserting and claiming a perpet-

ual lien upon such lands for the respective amounts of ad valorem taxes which have been levied against the same and which remain unpaid, and if the ad valorem taxes which are levied against said lands for the year 1941, and subsequent years, are not paid when due he will assert a lien upon such lands for the amount of such respective taxes. That if such taxes for any of such years are not paid by plaintiffs said County Treasurer will cause said lands to be advertised and sold for the purpose of collecting such taxes; in the manner provided by the Statutes of [fol. 50] the State of Oklahoma relating to the sale and resale of real estate for the collection of delinquent ad volorem taxes.

Dated this 14th day of July, 1941.

George H. Jennings, Attorney for Plaintiff. Mac Q. Williamson, Attorney General of the State of Oklahoma. Houston Bus Hill, Assistant Atty. General. Everett S. Collins, County Attorney, Creek County, Oklahoma. By Kenneth Hughes, Asst. Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

FINDINGS OF FACT AND CONCLUSIONS OF LAW—Filed July 21, 1941

This cause having come on for hearing on an agreed statement of facts filed herein by plaintiffs and defendants, and the court being fully advised in the premises, finds:

FINDINGS OF FACT

I

The court finds the facts in this case to be as shown by the Agreed Statement of Facts filed herein, *fo* which reference is hereby made as if fully incorporated herein.

CONCLUSIONS OF LAW

I

The court concludes that it has jurisdiction to hear and determine the issues in this case.

II

That the three tracts of land involved in this action were exempt from taxation by the State of Oklahoma, and its municipal subdivisions of Government for the years 1936 and 1937, under the provisions of the Act of Congress of June 20, 1936 (49 Stat. 1542); and that the tracts of land [fol. 51] designated as Tax Exempt in the Certificate of Tax Exemptions aforesaid, namely, the seven and one-half (7½) acre tract owned by plaintiffs and located in Section 36 above described as Tract Number 2 and the eighty (80) acre tract owned by plaintiff and located in Section 27, above described as Tract Number 3, were exempt from taxation by the State of Oklahoma and its municipal sub-divisions of Government for the years 1938 and 1939 and 1940, and such lands are now, and will continue to be exempt from taxation by the State of Oklahoma, and its municipal sub-divisions so long as the same are owned by and remain the homestead of plaintiffs and their restricted heirs, and until restrictions against alienation are removed in the manner provided by law, under the provisions of the Act of Congress of May 19, 1937 (50 Stat. 188).

III

That the taxes levied by defendants against the three tracts of land, aforesaid, for the years 1936 and 1937, and the taxes so levied by defendants against the lands described in the Certificate of Tax Exemptions for the years 1938 and 1939, were imposed in violation of the Acts of Congress, supra, and were and are illegal and void.

IV

That the payments of taxes made by plaintiffs as above set forth were made by them under compulsion and duress, and were made by plaintiff to quiet the title to their lands against the illegal and void tax lien asserted by defendants, and to prevent the accumulation of penalties and the sale of such lands for the collection of such legal and void taxes. That plaintiffs are entitled to recover from defendant, Board of County Commissioners of the County of Creek, State of Oklahoma, a municipal corporation, the respective amounts so paid by them with interest at the rate of six per-cent per annum from the date of such respective payments.

V

That the taxes so levied against the properties of plaintiff covered by the Certificate of Tax Exemptions, aforesaid, and remaining unpaid for the years 1939 and 1940, are illegal [fol. 52] and void, and should be cancelled, set aside and held for naught.

VI

That the plaintiffs are entitled to a declaratory judgment herein decreeing the lands designated as tax exempt in the Certificate of tax exemptions, aforesaid, to be exempt from taxation by the State of Oklahoma for the year 1940, and so long as such lands are owned by and remain the homestead of plaintiffs, or their restricted heirs, and until the restrictions against alienation are removed in the manner provided by law, and that an injunction should issue against the defendants, and their successors in office, perpetually enjoining and restraining such defendants from extending such lands upon the assessment lists of Creek County, Oklahoma, and from levying any taxes against the same for the year 1941, and so long thereafter as such lands shall belong to and remain the homestead of the plaintiffs, or their restricted heirs, and until the restrictions against alienation are removed in the manner provided by law.

(S.) F .E. Kennamer, Judge.

[File endorsement omitted.]

In United States District Court

Decree—Filed July 21, 1941

This cause comes on to be heard on this 17th day of July, 1941; the plaintiffs appearing by their attorney of record, George H. Jennings, and the defendants appearing by the Honorable Mac Q. Williamson, Attorney General of the State of Oklahoma, Houston Hill, Assistant Attorney General of the State of Oklahoma, and Everett S. Collins, County Attorney of the County of Creek, State of Oklahoma, and the Court having heard the evidence and being fully advised, finds the issues in favor of plaintiffs and against the defendants.

It Is Therefore Ordered, Adjudged and Decreed as follows:

That the plaintiffs do have and recover judgment against the defendant, Board of County Commissioners of the [fol. 53] County of Creek, State of Oklahoma, a municipal corporation, for the sum of One-thousand-five-hundred-fifty-seven and 33/100 dollars ($1,557.33), with interest at the rate of six per cent per annum from the 15th day of December, 1936; and that plaintiffs do have and recover judgment against the defendant, Board of County Commissioners of the County of Creek, State of Oklahoma, for the sum of Three Thousand six hundred eight and 51/100 dollars ($3,608.51), with interest at the rate of six per cent per annum from 14th day of November, 1939; and that plaintiffs do have and recover judgment against the defendant, Board of County Commissioners of the County of Creek, State of Oklahoma, for the sum of Eight-hundred-seventy-three and 76/100 dollars ($873.76), with interest at the rate of six per cent per annum from the 8th day of January, 1941.

That the following described real estate, belonging to plaintiffs, to-wit:

The West Half (W2) of the Southwest Quarter (SW4) of Section Twenty-seven (27), Township Eighteen (18) North, Range Eleven (11) East; and

The West Half (W2) of the Northwest Quarter (NW4) of the Southwest Quarter (SW4) of the Southwest Quarter (SW4), and the West Half (W2) of the East Half (E2) of the Northwest Quarter (NW4) of the Southwest Quarter (SW4) of the Southwest Quarter (SW4) of Section Thirty-six (36), Township Eighteen (18) North, Range Eleven (11) East;

were exempt from taxation by the County of Creek, State of Oklahoma, and its municipal sub-divisions of government, for the years 1939 and 1940, and that such lands will continue to be exempt from subsequent tax levies by said County, and its municipalities, so long as such lands are owned by and remain the homestead of plaintiffs, or their restricted heirs, and until restrictions against alienation are removed therefrom in the manner provided by law.

That the taxes levied against said lands for the years 1939 and 1940, by said defendants, and which remain unpaid, be, and the same are hereby decreed to be null, void and of no effect.

[fol. 54] That an injunction issue herein perpetually enjoining the defendants, and each of them, and their successors in office, from taking any steps to enforce the collection of the taxes levied against said lands, above described, for the years 1939 and 1940, or either or said years; and perpetually enjoining said defendants and each of them, and their successors in office, from extending or attempting to extend the property of plaintiff, above described, upon the assessment rolls and tax rolls of the County of Creek, State of Oklahoma, and from levying or attempting to levy advalorem taxes against the same for the year 1941, or any subsequent year during which such lands belong to and remain the homestead of plaintiffs, or their restricted heirs, until the restrictions against alienation have been removed from said lands in the manner provided by law.

That the plaintiffs have and recover their costs herein.

To which judgment the defendants except, and their exceptions are allowed.

(S.) F. E. Kennamer, Judge.

Approved as to form, and copy waived, this — day of July, 1941.

George H. Jennings, Attorney for Plaintiff. Mac Q. Williamson, Attorney General of the State of Oklahoma; by Houston Bus Hill, Assistant Attorney General; Everett S. Collins, County Attorney, Creek County, State of Oklahoma; Kenneth Hughes, Attorneys for Defendants.

[File endorsement omitted.]

[fol. 55] In United States District Court

Notice of Appeal—Filed October 20, 1941

Notice is hereby given that these defendants: Board of County Commissioners of the County of Creek, State of Oklahoma, a municipal corporation; H. L. Payne, County Treasurer of the County of Creek, State of Oklahoma; J. Clyde Staiger, County Assessor of the County of Creek, State of Oklahoma, and W. B. Kay, County Clerk, County of Creek, State of Oklahoma, appeal to the Circuit Court

of Appeals of the Tenth Circuit from the final judgment and decree entered in this action on July 21, 1941.

Mac Q. Williamson, Attorney General, Houston (Bus) Hill, Assistant Attorney General. (Address: State Capitol, Oklahoma City, Oklahoma.); Everett S. Collins, County Attorney, Kenneth Hughes, Assistant County Attorney, Attorneys for Defendants.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

APPLICATION TO SUBSTITUTE SUCCESSOR IN OFFICE PARTY DEFENDANT—Filed December 20, 1941

Come now the defendants in the above styled and numbered cause, by and through their Attorney, Houston Bus Hill, Assistant Attorney General of the State of Oklahoma, and moves the court that an order be entered herein substituting the name of W. Howard Seay, the present duly elected, qualified and acting County Assessor, J. Clyde Staiger, and for grounds therefor state:

That this action was originally commenced against the Board of County Commissioners of Creek County, State of Oklahoma, H. L. Payne, County Treasurer of Creek County; J. Clyde Staiger, County Assessor of Creek County, and W. B. Key, County Clerk of Creek County, and that summons was issued herein, and subsequent thereto J. Clyde Staiger was succeeded in office by W. Howard Seay, newly elected County Assessor of Creek County, Oklahoma; [fol. 56] and upon joint motion for substitution of party, copy of which is attached hereto, together with waiver of notice of hearing motion for substitution was filed herein on May 26, 1941; that pursuant to said joint motion and waiver the said W. Howard Seay, the present County Assessor of Creek County, Oklahoma, was substituted as party defendant in the place of J. Clyde Staiger who formerly occupied the County Assessor's office in Creek County, Oklahoma.

Defendants would further show that through inadvertence and oversight the name of J. Clyde Staiger was shown

in the caption in the decree entered on July 21, 1941, and thereafter the defendants in filing their application herein for extension of time within which to lodge appeal in the Tenth Circuit Court of Appeals inadvertently and through mistake carried forward the name of J. Clyde Staiger as County Assessor of Creek County in the caption of such application, when in truth and in fact the said W. Howard Seay was already substituted as County Assessor of Creek County, and should have been shown as such in the caption of such decree.

That all of this was an oversight and mistake on the part of the attorneys preparing these pleadings to be filed herein and the defendants respectfully request that this order should be granted at this time substituting the name of W. Howard Seay who is the present duly elected, qualified and acting County Assessor of Creek County, Oklahoma, in lieu of the name of J. Clyde Staiger whose name was inadvertently carried forward in the caption of the aforementioned pleadings as the County Assessor and one of the defendants in the above case, and this substitution will not in any way affect the rights of the plaintiffs herein.

Respectfully submitted, Mac Q. Williamson, Attorney General; Houston Bus Hill, Assistant Attorney General; Everett S. Collins, County Attorney, Creek County, Attorneys for Defendants.

[fol. 57] In United States District Court

Order Substituting W. Howard Seay as County Assessor of Creek County as Defendant in the Above Styled and Numbered Cause in Lieu and Instead of J. Clyde Staiger, His Predecessor in Office

Now on this 20th day of December, 1941, the Application of defendants to substitute W. Howard Seay as County Assessor of Creek County, Oklahoma, in lieu and instead of J. Clyde Staiger who formerly occupied such County Assessor's office, comes on for special hearing before this court, and for good cause shown, the court finds that said application should be granted.

It is, therefore, ordered, adjudged and decreed by this court that W. Howard Seay, the present duly elected, quali-

fied and acting County Assessor of Creek County, Oklahoma, be substituted in lieu and instead of J. Clyde Staiger whose name is shown as the County Assessor of Creek County, Oklahoma, one of the defendants in the above styled and numbered cause.

(S.) Royce H. Savage, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

PETITION TO VACATE ORDER SUBSTITUTING PARTY DEFENDANT —Filed December 30, 1941

Comes now the plaintiffs in the above numbered and styled cause, and respectfully show to the Court:

That on the 20th day of December, 1941, the defendants in the above numbered and styled cause filed therein their certain motion for the substitution of the name of W. Howard Seay, as party appellant herein in lieu of J. Clyde Staiger, one of the parties who joined in the notice of appeal in this cause, and that on the same date, without any notice whatsoever to plaintiffs herein, or to their counsel of record, the defendants caused the Judge of this Honorable Court to make and enter its order herein substituting the name of W. Howard Seay in lieu of J. Clyde Staiger, as party appellant in the above numbered and styled cause.

Your plaintiffs say that said order is void for the reason [fol. 58] that the said defendants did not serve a copy of said motion upon the plaintiffs or upon their counsel, as required by Rule 5 of the Rules of Civil Procedure, and is further void, for the reason that no notice of the hearing of said motion was given to plaintiffs or their counsel, as is required by Rule 6 D of the Rules of Civil Procedure.

Your plaintiffs further say that said order is void and of no effect, for the reason that final judgment was entered in this cause on the 21st day of July, 1941, and that the time allowed for the filing and service of notice of appeal expired on the 21st day of October, 1941, and that no appeal was taken from said judgment by the said W. Howard Seay, and that the judgment so rendered against him has become final, and this court is without jurisdiction to per-

mit an amendment or correction of the notice of appeal so as to include the said W. Howard Seay.

Your plaintiffs further say that they are informed and believe, and therefore allege the fact to be that said motion was filed without the knowledge or consent of the County Attorney of the County of Creek, State of Oklahoma, whose name is annexed thereto, and without the knowledge or consent of the said W. Howard Seay for whose benefit said order was obtained.

Wherefore, plaintiff prays that the order so made and entered herein on the 20th day of December, 1941, be vacated, set aside and held for naught, and the record thereof be expunged.

(S.) George H. Jennings, Attorney for Plaintiff.

I hereby certify that I mailed true and correct copies of above motion to Hon. Mac Q. Williamson, Attorney General, and Everett Collins, County Attorney, this 29th day of December, 1941.

[File endorsement omitted.]

[fol. 59] In United States District Court

Clerk's Minutes of January 5, 1942

Enter order overruling Motion of Plaintiff to vacate order substituting party.

Royce H. Savage, Judge.

[Appeal bond in the sum of $250.00, with appellants as principals and Massachusetts Bonding and Insurance Company, Boston, Massachusetts, as surety, was filed January 16, 1942.]

[Appellants' statement of points, filed in the district court, is identical with the statement which appears at page 1.]

[The items contained in the stipulated designation of record on appeal, filed in the district court, are substantially identical with the items appearing in the designation filed in the United States Circuit Court of Appeals, page 3.]

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME WITHIN WHICH TO LODGE APPEAL IN THE TENTH CIRCUIT COURT OF APPEALS—Filed November 29, 1941

Now, on this 29th day of November, 1941, the defendants' Application for Extension of Time Within Which to Lodge Appeal in the Tenth Circuit Court of Appeals comes on to be be heard.

For good cause shown said application for extension of time is granted, and the defendants are hereby given thirty (30) days from November 30, 1941, within which to docket this case and file record herein on appeal with the Clerk of the United States Circuit Court of Appeals for the Tenth Circuit.

(Signed) Royce H. Savage, District Judge.

[File endorsement omitted.]

[fol. 60] IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME WITHIN WHICH TO LODGE APPEAL IN THE TENTH CIRCUIT COURT OF APPEALS—Filed December 30, 1941

Now, on this 30th day of December, 1941, the defendants' Application for Extension of Time Within Which to Lodge Appeal in the Tenth Circuit Court of Appeals comes on to be heard.

For good cause shown, said Application for Extension of Time is granted, and the defendants are hereby given twenty (20) days from December 30, 1941, within which to docket this case and file record herein on appeal with the Clerk of the United States Circuit Court of Appeals for the Tenth Circuit.

(S.) Royce H. Savage, United States District Judge.

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 61] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

ORDER OF SUBMISSION

Twenty-third Day, March Term, Wednesday, May 20th, A. D. 1942. Before Honorable Orie L. Phillips, Honorable Alfred P. Murrah and Honorable Robert L. Williams, Circuit Judges.

This cause came on to be heard and was argued by counsel, Mac Q. Williamson, Esquire, and Houston Bus Hill, Esquire, appearing for appellants, George H. Jennings, Esquire, appearing for appellee.

Thereupon this cause was submitted to the court.

IN UNITED STATES CIRCUIT COURT OF APPEALS

Mac Q. Williamson, Attorney General of the State of Oklahoma, and Houston Bus Hill, Assistant Attorney General, (Everett S. Collins, County Attorney, Creek County, Oklahoma, and Kenneth Hughes, Assistant County Attorney, Creek County, Oklahoma, were with them on the brief) for appellants.

George H. Jennings for appellees.

OPINION—August 22, 1942

Before Phillips, Murrah and Williams, Circuit Judges.

MURRAH, Circuit Judge, delivered the opinion of the court.

The appellees, as un-enrolled full-blood Creek Indians, instituted this suit in their own behalf against the duly constituted officials of Creek County, Oklahoma, a municipal corporation, to recover ad valorem taxes and penalties theretofore paid, plus 6% interest from the date of payment; for cancellation of the assessed and unpaid taxes, and for a judgment declaring the nontaxable status of certain lands located in Creek County, Oklahoma, of which they were the grantees from their mother, Wosey John, now Deere, (since deceased) a full-blood enrolled Creek Indian. The lands in question were purchased for and on behalf of Wosey John, now Deere, by the Secretary of the

[fol. 62] Interior from non-Indian owners [1], out of accumulated trust or restricted funds derived as proceeds from oil and gas produced from the restricted allotment of the said Wosey John, now Deere, pursuant to Section one of the Act of May 27, 1908, (35 Stat. 312).

One parcel of land purchased on December 11, 1915, consisted of property located within the city limits of Sapulpa, Oklahoma; one tract purchased March 24, 1920, consisted of 7½ acres of agricultural land; and another tract purchased December 8, 1927, consisted of 80 acres of agricultural land, all located in Creek County, Oklahoma. Each of the deeds to Wosey John, now Deere, contained a provision restricting the land against alienation or encumbrance unless approved by the Secretary of the Interior, or unless otherwise provided by law.

On March 4, 1931, the said Wosey John, now Deere, in consideration of "$1.00 and love and affection", and with the consent and approval of the Secretary of the Interior, conveyed all of the lands in question to her children and heirs (appellees here), reserving unto herself a life estate in the lands, together with the rents and profits therefrom. The deed of conveyance contained a provision against alienation or encumbrance unless approved by the Secretary of the Interior, with a further provision in the habendum clause as follows: "To have and to hold said described premises, unto said grantees, their heirs and assigns, forever, free, clear and discharged of all * * * taxes, judgments, * * * and other liens and encumbrances of whatsoever nature * * *".

Thereafter and on December 10, 1937, in consideration of "$1.00 and love and affection", the said Wosey John, now Deere, conveyed her life estate, heretofore reserved in all of the land, to the appellees. The conveyance was not approved by the Secretary of the Interior, but the Superintendent of the Five Civilized Tribes certified that the land in question was purchased for the appellees to be held in trust by the United States of America for their benefit by virtue of their being full-blood Creek Indians, not enrolled, [fol. 63] and that the deed was executed and approved pur-

[1] Although not definitely established, we assume that all of the land involved here formerly belonged to non-Indian owners, and as such was taxable by the State of Oklahoma.

suant to the Act of May 27, 1908, supra. On December 16, 1937, the appellees executed a certificate designating the agricultural lands, consisting of 87½ acres, as their homestead. The said certificate was approved by the Secretary of the Interior on March 24, 1938, and duly filed in the office of the county clerk of Creek County, Oklahoma.

Prior to 1936, all the lands in question, whether held in the name of Wosey John, now Deere, or her children (appellees here), were subject to taxation by the State of Oklahoma and its political subdivisions, McCurdy v. United States, 246 U. S. 263; United States v. Gray, 284 F. 103; United States v. Ransom, 284 F. 108, same 263 U. S. 691; see also Shaw v. Gibson-Zahniser Oil Corporation, 276 U. S. 575, and apparently taxes were levied, assessed and collected on the said lands as unrestricted and non-exempt lands in Oklahoma.

The appellees paid the ad valorem taxes and penalties levied and assessed against all the lands in question for the taxable years 1936 and 1937, and the taxes and penalties levied and assessed against the agricultural land (which had been designated as a homestead on December 16, 1937), for the taxable year 1938, and a part of the taxable years 1939 and 1940. The Creek County officials levied and assessed taxes against all of the property, including the homestead, for the taxable years 1940 and 1941, and assert the power to continue to levy and assess taxes against all of the lands in question, and to collect the taxes by sale as provided by the laws of Oklahoma.

Effective June 20, 1936, Congress passed an Act (Public No. 716, 49 Stat. 1542), "To relieve restricted Indians whose lands have been taxed or have been lost by failure to pay taxes, and for other purposes". By Section one of the Act, Congress appropriated $25,000.00 to be expended under rules and regulations prescribed by the Secretary of the Interior for the payment of taxes, penalties, and interest assessed against individually owned Indian lands, the title to which is held subject to restrictions against alienation or encumbrance, except with the consent or approval of the Secretary of the Interior, and heretofore purchased out of trust or restricted funds of an Indian, where the [fol. 64] Secretary finds that such land was purchased with the understanding and belief on the part of said Indian that after purchase it would be nontaxable, and for redemp-

tion or reacquisition of any such lands heretofore or hereafter sold for nonpayment of taxes.

Section two of the Act provides, "All lands the title to which is now held by an Indian subject to restrictions against alienation or encumbrance, except with the consent or approval of the Secretary of the Interior, heretofore purchased out of trust or restricted funds of the said Indian, are hereby declared to be instrumentalities of the Federal Government, and shall be nontaxable until otherwise directed by Congress". (See Senate Report No. 2168, 74th Congress, Second Session. House Report No. 2398, 74th Congress, Second Session).

After passage of the Act of June 20, 1936, supra, it was found that the provisions of Section two thereof would apply to lands and other property purchased by restricted Indian funds which would exempt from taxation vast quantities of property, such as business buildings and farm lands which were not homesteads, and would consequently place an unfair burden upon taxable lands included within the taxing jurisdiction. Accordingly, the Commissioner of Indian Affairs appeared before the Senate Committee on Indian Affairs and suggested an amendment to the Act of June 20, 1936, supra. (See Senate Report No. 332, 75th Congress, First Session). Accordingly, the Act of May 19, 1937 (Public No. 96, 50 Stat. 188, Title 25 USC 412 (a)), amended Section two of the Act of June 20, 1936, supra, to read as follows: "*All homesteads*, heretofore purchased out of trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress; Provided, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior: And provided further, That the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of 160 acres, or the village, town, or city property, not exceeding in cost $5,000.00, to be designated as a homestead".

Tax immunity as to all the lands involved is asserted for [fol. 65] the years 1936 and 1937 under the provisions of Section two of the Act of June 20, 1936, supra, while immunity is claimed on the designated homestead only for the

years 1938, 1939, 1940 and thereafter, under the provisions of the amendatory Act of May 19, 1937, supra. The principal question for decision is whether all the lands are exempt from ad valorem taxation under the Act of June 26, 1936, supra, for the period during which the said Act is applicable; and whether the designated homestead is exempt from taxation under the amendatory Act of May 19, 1937, supra, for the period during which it is applicable. Subsidiary to the principal question is the determination of the taxable period during which the original and the amendatory acts are applicable to the lands involved.

The trial court sustained the contentions of the appellees, gave judgment for the amount of the taxes and penalties paid, plus 6% interest from the date of payment; cancelled the assessed but unpaid taxes and penalties as illegal and void, and perpetually enjoined the taxing authorities (appellants here) from further levy or assessment of ad valorem taxes on the designated homestead. 38 Fed. Supp. 731.

On appeal, as below, the jurisdiction over the subject matter is challenged for lack of diversity of citizenship, but clearly, the controversy involves the validity, construction, or effect of a law of the United States, upon the determination of which the result depends. The right or immunity asserted here is such that it will be supported if the law is given one construction and effect, and defeated if it receives another. Shulthis v. McDongal, 225 U. S. 561; Gully v. First National Bank, 299 U. S. 109. The requisite amount in controversy is present and the court had jurisdiction of the subject matter regardless of diversity of citizenship.

The consfitutionality of the acts involved here is also challenged on the grounds that Congres is without power, under the Federal instrumentality doctrine, to create a tax-free instrumentality from otherwise taxable lands by purchase of the same with trust or restricted funds of a restricted Indian, and by prohibiting their alienation without the consent and approval of the Secretary of the Interior.

Undoubtedly the Secretary of the Interior was authorized to purchase the lands in question from the trust or re- [fol. 66] stricted funds of Wosey John, now Deere, and to restrict their alienation or encumbrance without the Secretary's consent and approval. Section one of the Act of May 27, 1908, supra; Sunderland v. United States, 266 U. S. 226; United States v. Law, 250 F. 218; United States v. Brown,

8 F. 2d 564; United States v. Goldfeder, 112 F. 2d 615. Likewise the Secretary of the Interior was authorized to approve the conveyance from Wosey John, now Deere, to her full-blood restricted children, subject to the same restrictions, and the said lands retained their restricted character in the grantees. Clinkenbeard v. United States, 109 F. 2d 730, and Act of January 27, 1933 (47 Stat. 777).

Aside from the historically paramount power of Congress to legislate for and on behalf of its Indian wards, United States v. Kagama, 118 U. S. 375; Cherokee Nation v. Hitchcock, 187 U. S. 294; United States v. Rickert, 188 U. S. 432; Tiger v. Western Investment Company 221 U. S. 286; Choate v. Trapp, 224 U. S. 665; United States v. Wright, 53 F. 2d 300, the State of Oklahoma, has by acceptance of statehood under Section one of the Enabling Act (Act of June 16, 1906, 34 Stat. 267), conceded the power and authority of the United States government to make any law or regulation respecting Indians, their lands, property, or other rights by treaties, agreement, law or otherwise. Tiger v. Western Investment Company, supra; Ex Parte Webb, 225 U. S. 663, 678; United States v. Sandoval, 231 U. S. 28, 48. The State of Oklahoma has recognized the paramount jurisdiction of the Federal Government to legislate for and on behalf of its Indian wards with respect to lands located within state boundaries. Gleason v. Wood, 28 Okla. 502, 114 Pac. 703, 705; McIntosh v. Dill, 205 Pac. 917; Wynn v. Fugate, 299 Pac. 890; United States v. Board of Commissioners of Osage County, 26 F. Supp. 270, 275. By these acts (Acts of June 20, 1936 and May 19, 1937, supra), Congress has assumed a guardianship over the affairs of restricted Indians, with respect to which it has the indubitable power to legislate and by such legislation to protect its guardianship against encroachment or impairment by the state through its taxing powers.

But the restrictions against alienation imposed by the Secretary of the Interior, in virtue of his power and duty [fol. 67] to supervise Indians and Indian affairs, does not without more operate to effect an immunity from state taxation. Restrictions against alienation imposed by the Secretary of the Interior does not necessarily create a tax-free government instrumentality. McCurdy v. United States, supra; United States v. Gray, supra; United States v. Ransom, supra; Shaw v. Gibson-Zahniser Oil Corporation, supra; Choteau v. Burnet, 283 U. S. 691; Superintend-

ent v. Commissioner, 295 U. S. 418; Landman v. Commissioner of Internal Revenue, 123 F. 2d 787. Lands allotted to individual Indians in pursuance of a treaty or act of Congress, by the terms of which it is agreed between the United States Government and the tribe, assented to by the state, that the lands thus allotted in severalty shall remain tax free for a stipulated period, creates a vested property right in the individual allottee which neither the national nor state government may impair or invade. It is a vested property right protected by the constitution, and any attempt to invade or impair will be judged in the light of the treaty obligations of the United States, and especially in the light of the obligation which the United States Government has historically assumed in relation to its intercourse with the Indian tribes. (Act of June 28, 1898, 30 Stat. 495, 507; Act of May 27, 1908, 35 Stat. 312). United States v. Thurston County, 143 F. 287; United States v. Rickert, supra; Carpenter v. Shaw, 280 U. S. 363; Choate v. Trapp, supra; Ward v. Love County, 253 U. S. 17; Bryan County v. United States, 123 F. 2d 782.

But unlike lands allotted in severalty to members of the Five Civilized Tribes, under an agreement or treaty, providing for immunity from taxation until removed by the terms of the agreement or treaty, tax immunity here depends upon the express will of Congress, and must be found within the plain terms of the legislation relied upon to effect the exemption. Shaw v. Gibson-Zahniser Oil Corporation, supra. By the Act of June 20, 1936, as amended by the Act of May 10, 1937, supra, Congress has plainly expressed a purpose to protect lands purchased with trust or restricted funds of a restricted Indian so long as the said lands are restricted from alienation without the approval of the Secretary of the Interior, and to effect that purpose, Congress has declared such lands to be instrumentalities of the Fed-[fol. 68] eral Government and exempt from taxation until otherwise directed by Congress. The history of the legislation, as well as the text of the acts, indicates quite clearly a Congressional purpose to fulfill its obligation to this particular class of Indians arising out of an erroneous assumption that the restricted character of the lands in question operated to create a tax-free instrumentality by necessary implication. See McCurdy v. United States, supra; Shaw v. Gibson-Zahniser Oil Corporation, supra; United States v. Ransom, supra; United States v. Gray, supra; Landman

v. Commissioner of Internal Revenue, supra; Superintendent v. Commissioner, supra.

But the appellants contend that in order to come within the scope of Section two of the Act of June 20, 1936, supra, the lands must have been "heretofore purchased with trust or restricted funds of the said Indian", and that since March 4, 1931, and particularly for the taxable years 1936 and 1937, the lands sought to be taxed were held not by the restricted Indian whose trust or restricted funds purchased the land, but by the grantees of the said Indian as a gift; that none of the lands was purchased by the restricted funds of the appellees, hence they do not come within the purview of the Act declaring a government instrumentality.

It is true that no trust or restricted funds of the appellees were invested in the lands in question. The appellees held the same as a gift from their mother, whose trust or restricted funds were used to purchase same, and it may be admitted that when considered by its technical language, without regard to its natural meaning or purpose, and without relation to the amendment (May 19, 1937), there is cause for doubt concerning the application of the original act to lands, the title to which has passed from the Indian whose trust or restricted funds purchased the same. But when, on March 4, 1931, Wosey John, now Deere, conveyed the lands to the appellees, she, by express language in the deed of conveyance, retained unto herself a life estate, together with the improvements thereon and the rents and profits therefrom. She warranted the title against judgments, taxes, liens, and encumbrances of whatsoever nature. As such life tenant, she held the dominant and taxable estate, and it was her statutory duty to pay all lawful taxes levied against the land so long as she retained the life estate. Revised Laws of Oklahoma of 1910—6664; 60 O. S. A. 69; [fol. 69] Helm v. Belvin, 232 Pac. 382; Riley v. Collier, 238 Pac. 491; Waldon v. Baker, 88 Pac. 2d 352; Tiffany on Real Property, Vol. 1, Sec. 63; 17 A. L. R. 1384; 94 A. L. R. 311.

It follows that she is entitled to the tax immunity granted by the Act whilst she owned the dominant estate, and the appellees, as vested remaindermen, are entitled to the benefits of the tax immunity which attached to the land while Wosey John, now Deere, held the life estate therein. Since Wosey John, now Deere, retained the life estate until December 10, 1937, and until after the effective date of the amendatory Act of May 19, 1937, all the lands in question

were immune from taxation for the period during which the original Act is applicable as "lands heretofore purchased out of trust or restricted funds of the said Indian." When on December 10, 1937, Wosey John, now Deere, conveyed her life estate in the lands to the appellees, and the appellees became obligated to pay all lawful taxes assessed against the land, the Congress had previously and on May 19, 1937, eliminated the ambiguity provoking language contained in the original act by declaring that all homesteads heretofore purchased with trust or restricted funds of an *individual Indian*, restricted against alienation without the approval of the Secretary of the Interior, were instrumentalities of the Federal Government and exempt from all taxes, provided the homestead was selected in accordance with the amendment. Consequently, the homestead, when designated, is embraced within the amendatory Act of May 19, 1937, and is exempt from taxation for the period during which it is applicable. The agricultural lands were selected and designated as a homestead by the appellees on December 16, 1937, six days after acquisition of title thereto on December 10, 1937. The designation was not formally approved by the Secretary of the Interior until March 4, 1938, but we think the formal approval by the Secretary related back to the date of the designation.

The taxable year in Oklahoma is the fiscal year and begins July first and not January first. Real estate is assessable in the name of the owner thereof on January first of any year, and the taxes thus assessed are levied as of July first of the same year, which is the beginning of the current, fiscal, and taxable year. In re Texas Company's Assessment, 31 Pac. 2d 929. Real estate assessable in the name of [fol. 70] the owner on January first of any year does not change its taxable status or become exempt from taxation for the ensuing taxable year beginning July first, because it acquired a nontaxable character between the date of the assessment on January first and the date of the levy on the following July first. Board of Commissioners of Comanche County v. Central Baptist Church, 276 Pac. 726; as corrected In re Texas Company's Assessment, supra, p. 931. The taxable status of all property in Oklahoma is fixed as of January first of each year for the ensuing taxable year beginning July first, and its status as fixed on that date is not changed by intervening circumstances affecting its taxability between the date of the assessment and the levy date.

In re Assessment of Champlin Refining Company, 99 Pac. 2d 880. It follows that property not assessable as of January first of any year, because exempt from taxation, is nontaxable for the following fiscal and taxable year beginning July first, although it may have become subject to taxation between the assessment date on January first and the levy date on the following July first. In re Sinclair Prairie Oil Company, 53 Pac. 2d 221, 229. See also In re Assessment of Champlin Refining Company, supra.

The exemption granted here is based upon the power of the Federal Government to create a Federal instrumentality out of lands heretofore taxable by the State of Oklahoma, and to immunize them against state taxation. But there is nothing in the acts here involved indicating an intention or purpose to disfupt the orderly procedure by which the State of Oklahoma pursues its statutory scheme of taxation, so long as such procedure does not circumvent or proscribe the declared purpose of the national enactment. We see no reason here to depart from the orderly procedure as outlined by the state law in the determination of the period in which the respective exempting acts have application to the lands embraced within the compass of the Acts. The right to be vindicated is a Federal right, but state laws have a distinct relevancy and they are entitled to a respectful consideration. Their observance here will result in a synchronization of state and Federal law and give vitality to both, while to ignore them would result in doubt and confusion. Board of Commissioners of Jackson County v. United States, 308 U. S. 343; Cf. United States v. Alabama, 313 U. S. 274.

[fol. 71] When measured by this rule, all of the lands in question were subject to taxation and therefore assessable on January 1, 1936, on which date the taxable status was fixed; they were therefore subject to taxation on the levy date which was July 1, 1936 for the ensuing taxable year ending June 30, 1937, although declared exempt from state taxation on June 20, 1936.

By the same rule, all of the lands in question, having been declared exempt from taxation on June 20, 1936, were not subject to taxation by the state, therefore nonassessable on January 1, 1937, for the ensuing fiscal and taxable year beginning July 1, 1937. The lands were therefore exempt from taxation for the taxable year beginning July 1, 1937. In re Sinclair Prairie Oil Company, supra; In re Assessment of Champlin Refining Company, supra.

On January 1, 1938, all of the lands, except the designated homestead, were assessable for taxation because nonexempt under the amendatory Act of May 19, 1937, and the homestead having been selected in accordance with the amendment by the appellees on December 16, 1937, was exempt from taxation for the taxable year beginning July 1, 1938, and thereafter, so long as restricted against alienation without the approval of the Secretary of the Interior or until otherwise directed by Congress.

It is also contended that since the appellees did not pursue the statutory remedy provided by Section 12665 O. S. 1931, (68 O. S. A. 263 - 15.59 and 15.50), which remedy is exclusive, they may not by these proceedings recover the taxes paid without protest. But it is true, as the appellants concede, that the appellees were put to the choice of either paying the taxes assessed and levied against the property, or having the lands sold to satisfy the same as provided by the laws of Oklahoma. The taxes were therefore not paid voluntarily, but under compulsion and duress. Ward v. Love County, supra, p. 24; Carpenter v. Shaw, supra, p. 369. "This exemption is not subject to violation by the state tax laws or administrative officials, directly or indirectly. So far as the state taxing power is concerned, the exempt lands do not exist," and to the extent herein observed, "The land is as effectively without the pale of the tax laws and their administration as if they were located in another state. All proceedings of the taxing power, having [fol. 72] as their effect a violation of this exemption, are without jurisdiction and void, * * *." Hutchinson v. Brown, 167 Pac. 624, 628. See also Johnson v. Jackson, 9 Pac. 2d 950.

The above authorities relate to a tax deed covering tax exempt lands, but we think the principle has application here. It follows that the right to recover taxes, illegal and void because beyond the jurisdiction of the taxing authorities, cannot be made to depend upon any procedural requirements of the State of Oklahoma, the effect of which would deny a vested right of immunity granted by a law of the United States. Carpenter v. Shaw, supra. See also Board of Commissioners of Jackson County v. United States, supra.

The contention with reference to the statute of limitations need not be noticed since we hold that all of the lands involved here were not exempt from taxation for the taxable

year beginning July 1, 1936 and ending June 30, 1937, hence the taxes levied, assessed, and paid for this period, together with the penalties, were lawful and not recoverable. All other taxes assessed and paid, and held to be illegal and void, are concededly within the statute of limitations.

We conclude that the trial court erroneously granted a recovery for the taxes and penalties for the taxable year beginning July 1, 1936; furthermore the allowance of interest on the taxes paid, held to be illegal and void, is disallowed under the authority of Board of Commissioners of Jackson County v. United States, supra; Bryan County v. United States, supra.

As modified, the judgment is affirmed.

DISSENTING OPINION

WILLIAMS, Circuit Judge, Dissenting:

This appeal involves a judgment in favor of plaintiffs below (appellees herein), to-wit, Evelyn Seber, otherwise designated as Osharsha John, Jimmie Powshiek, and Juanita Deer, now McIntosh, children of Wosey John, afterward Deere, now deceased, aaginst defendants below (appellants herein), to-wit, Board of County Commissioners of Creek County, and its treasurer and assessor and clerk, for taxes [fol. 73] paid on December 15, 1936, levied for said year on lots located in Block 39, original townsite of Sapulpa, Creek County, Oklahoma, $829.61, and for year 1936 on 80 acres allotted in Section 27, $848.80, total amount paid $1678.41, with refund on May 12, 1937 on $121.08, net amount paid on said December 15, 1936 of $1557.33, and for ad valorem taxes paid on November 14, 1939 levied as follows: for year 1936 on 7½ acres allotted land in Section 36, including penalties, $171.98, for year 1937 on said 7½ acres in Section 36, with penalties included, $136.87, for year 1937 on said Lots in Block 39, City of Sapulpa, including penalties, $917.04, for year 1937 on said 80 acres in Section 27, including penalties, $993.97, for year 1938 on said 7½ acres in Section 36, including penalties, $164.04, for year 1938 on said 80 acres in Section 27, including penalties, $799.67, total taxes for 1938 in Section 27, including penalties, $143.80, total taxes, etc., paid November 14, 1939, $3608.51. Ad valorem taxes paid on January 8, 1941: Two thirds of taxes levied for year 1939 on said 7½ acres in Section 36, including penalties, $117.76, two-thirds of taxes levied for year

1939 on said 80 acres in Section 27, including penalties, $663.24, two-thirds of taxes levied for year 1940 on said 7½ acres in Section 36, including penalties, $92.76, total taxes paid on January 8, 1941, $873.76.

Said lots are described as follows:

Center 50 feet of Lot 6, and the center 50 feet of the South 33.41 feet of Lot 3 in Block 39, in the City of Sapulpa (original townsite) Creek County (in the Creek Nation).

Said 80 acres in Section 27 as follows:

W½ SW¼, Section 27, Township 18 North, Range 11 East, Creek County, Oklahoma.

Said 7½ acres in Section 36 as follows:

W½ NW¼ SW¼ SW¼ and W½ E½ NW¼ SW¼ SW¼, Section 36, Township 18 North, Range 11 East, Creek County, Oklahoma.

Interest was awarded at the rate of 6% per annum from December 15, 1936, date said taxes were paid, and likewise from November 14, 1939, and January 8, 1941, at same rate [fol. 74] of interest. Taxes not paid were adjudged to be void and of no effect, and permanent injunction awarded against collection.

The United States of America is in no way, manner, or capacity of any agency a party to this action either in the trial or appellate court, the action having been instituted and prosecuted in the individual capacity of the said plaintiffs by private attorney and counsel, without any direction in any way by the United States.

Apellants urge that the trial court (1) was without jurisdiction, no diversity of citizenship, (2) and no federal question involved, (3) that state procedure provided remedy for recovery or refund of such taxes where illegally paid, (4) same could have been paid under protest and suit brought within time as permitted by state statute, or (5) by filing affidavit for correction as to erroneous assessment with the Board of Equalization, and (6) action could have ben instituted within three years before bar of statute of limitations fell, none of which was done, and (7) not entitled to relief under Act of Congress of June 20, 1936 (49 Stat. L. 1542), as amended by Act of Congress of May 19, 1937 (50 Stat. L. 188).

Wosey John, now Deere, a full-blood member of the Muskogee (Creek) tribe of Indians, approved tribal membership (Roll No. 9546), mother of the appellees herein, deceased at time this action was tried and until date of her death the Secretary of the Interior had in his custody restricted funds belonging to her derived from restricted oil and gas royalties on her restricted allotted lands which were used for and by her through the approval and action by the Secretary of the Interior between the dates of December 11, 1915, and November 8, 1927, inclusive, to purchase parcels of land as above described, the said purchased parcels, excepting said town lots, having become unrestricted after allotment, was purchased when unrestricted with such restricted funds, and said town lots so purchased from owners thereof, a part of the original Sapulpa townsite in the Creek Nation, and which had been segregated, surveyed, bounded, laid out, platted, approved and sold and conveyed by deed or patent under supervision of the United States Government for the Creek tribe in fee without any reserved restrictions whatever thereon, by valid federal [fol. 75] act said original townsite being reserved from the Creek tribal lands, the boundaries surveyed, including blocks, lots, alleys, streets, etc., platted, appraised, sold and conveyed under the townsite provisions contained in Act of Congress of June 28, 1898 (30 Stat. 495), and Creek Supp. Treaty, June 30, 1902 (32 Stat. 500), and Original Creek Treaty, Act of March 1, 1901 (31 Stat. 861), Sections 2 and 3, and Act of Congress (30 Stat. 495), Section 30, and Sections 1, 2, 3, 11, 12, 14, Tentative Creek Treaty, September 27, 1897, contained in said Act of June 28, 1898, said lots, after due issuance and recording of deed or patent, being free of all restrictions whatever, and thereafter the laws of the United States Government applied exclusively to and over said townsite, and after erection of the state of Oklahoma on November 16, 1907, state laws applied.

The Secretary of the Interior, so far as the record discloses, neither had in his possession nor in the control or custody of his department until after death of mother September 2, 1938, any restricted funds of either one of these appellees—full blood Creeks born after March 4, 1906—in no way on the approved Creek roll as members of the tribe so as to be entitled to participate in allotments in Creek tribal lands or the distribution of tribal funds, and any participation on their part could be merely as heirs

mediately or otherwise and the only right to participate under the deeds from their mother was purely as a gift as to whether the gift in the deed carried with it the right as to continuance of restrictions in their favor would depend on whether there was an understanding or agreement on her part when the purchase on her part and conveyance was originally made to her that as to the amount of consideration for each of the three deeds to her from the original three grantors that her funds held by the Secretary of the Interior as part of her restricted royalties in such amount should be so transferred on his records for their benefit as to vest in them (appellees) and by the Secretary of the Interior then and there applied for such consideration, and that then she should hold in trust the title to said three parcels of realty for them to be later by her conveyed to them.[1] [fol. 76] There is no such proof in the record and the burden rests on appellees. She neither acquired these parcels of land as her technical Creek homestead as she had such original homestead allotted to her under Creek Treaty, nor as restricted in trust for appellees on December 11, 1915, March 24, 1920, and on December 8, 1927, as the original allotted lands had become oil producing, and with her restricted oil royalty funds the said W½ SW¼, Section 27, Twp. 18N, Range 11E, I. B. & M. (80 acres) was purchased for a home for her, and afterwards, on March 4, 1931, she executed deed (Exhibit D) with warranty conveying *jointly* to her three non-enrolled full blood children, born after March 4, 1906, with the clause contained therein prohibiting them in effect from alienating the same without consent and the approval of the Secretary of the Interior, and reserving all rents and proceeds in connection with a life estate therein which she retained in said conveyance, and on May 19, 1937 for a recited consideration of "$1.00 and love and affection," a pure gift, she conveyed to appellees *jointly* said life estate, no restricted funds on their joint part being any part of a consideration therefor. Said deed from Wosey John Deere, attached as Exhibit A to complaint (deed of December 11, 1915), contained the following clause:

"Subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell or other instrument affecting the land herein described or the title thereto, executed during the lifetime of said grantee at any time prior

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[1] Clinkenbeard v. United States, 10 Cir., 109 F. 2d 730.

to April 26, 1931, shall be of any force and effect or capable of confirmation or ratification, unless made with the consent or approved by the Secretary of the Interior."

Certificate of the Acting Superintendent of the Five Civilized Tribes (Secretary of Interior not otherwise approving same),[2] appears as of December 11, 1915, date on which [fol. 77] said deed was executed and attached thereto, in which it is stated:

"I hereby certify that the land described in the above deed was purchased for the said Wosey John with funds Held in Trust by the United States *for her benefit from funds derived from oil royalties for restricted land, inherited by the said Wosey John*, by virtue of her enrollment as a full-blood citizen of the Creek Nation, opposite No. 9546 on the final approved rolls of citizens by blood of that Nation, and that said purchase was made and said deed was executed, and the same is hereby approved pursuant to the Regulations prescribed by the Secretary of the Interior under the Act of Congress approved May 27, 1908, and the Act approved August 1, 1914." (Emphasis supplied) (So as such enrolled full blood she held restricted inherited allotted land in addition to her allotment.)

Said deed covered said Lots 3 and 6 in Block 39, original townsite of Sapulpa, with a warranty from the grantor, as herein described.

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[2] "If Congress, in fulfillment of its duty to protect the Indians, whose welfare is the peculiar concern of the Federal Government, deems it proper to restrict for a *limited* time the right of the individual Indian to alienate land purchased for him with funds arising from the sale of other (allotted) lands originally subject to a like restriction, we are not aware of anything which stands in the way. The state of Oklahoma is not concerned, since there is no state statute, rule of law or policy, which has been called to our attention, to the contrary effect. If there were, or if the power of state taxation were involved, we should consider the *question of supremacy of power;* but no such question is presented by this record." (Emphasis supplied) Sunderland v. United States, 266 U. S. 226; United States v. Ransom, 263 U. S. 681; Shaw v. Gibson-Zahniser Oil Corp., 276 U. S. 575; United States v. Gray, 284 Fed. 103.

The Second deed (Exhibit B), dated March 24, 1920, covered W½ NW¼ SW¼ SW¼ and W½ E½ NW¼ SW¼ SW¼, Section 36, Township 18 North, Range 11 East, containing 7½ acres, with a warranty by the grantor, and containing the same clause as to restrictions as in said Exhibit A (deed), and attached there o is a statement of the Superintendent for the Five Civilized Tribes, but no approval otherwise by Secretary of Interior, as follows:

"I hereby certify that the land described in the above deed was purchased for the said Wosey Powesheik, nee John, with funds Held in Trust by the United States for her benefit derived *from oil royalties from restricted land allotted* to said Wosey Powesheik, nee John, by virtue of her [fol. 78] enrollment as a full-blood citizen of the Creek Nation, opposite No. 9546 on the final approved rolls of the citizens by blood of that Nation, and that said purchase was made and said deed was executed, and the same is hereby approved pursuant to the regulations prescribed by the Secretary of the Interior under the Act of Congress approved May 27, 1908, and the Act approved August 1, 1914." (Emphasis supplied) (So she had restricted oil royalties from her allotment.)

On November 8, 1927, Exhibit C, deed dated November 8, 1927, was executed to Wosey John Deere by American National Bank, covering W½ SW¼ of Section 27, Township 18 North, Range 11 East, containing substantially same clause as to restrictions, etc. as contained in said Exhibits A and B and the attached certificate of Acting District Superintendent for the Five Civilized Tribes, and not otherwise joined in by Secretary of the Interior.

The deed (Exhibit D) to appellees, executed on March 4, 1931, recites consideration of "$1.00 and love and affection" and that Wosey John, now Deere, "does hereby grant, bargain, sell and convey unto Osharsha John, now Evalin Seber, Jimmie Powesheik and Juanita Deere, the legal issue of their bodies * * *: W½ SW¼, Section 27, Township 18 North, Range 11 East, and W½ NW¼ SW¼ SW¼ and W½ E½ NW¼ SW¼ SW¼, Section 36, Township 18 North Range 11 East, and also Center Fifty feet of Lot 6, and Center Fifty feet of South 33.4 feet of Lot 3, all in Block 39, of the original townsite of Sapulpa," the grantor retaining all the rents and profits to be derived from all the above property, so long as she lives, that is,

the grantor retains a life estate in all of the real estate described in this deed, together with all the improvements thereon, and the appurtenances thereunto belonging, and warrant the title to the same * * * subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell, or other instrument affecting the land herein described or the title thereto shall be of any force and effect or capable of confirmation or ratification, unless made with the consent or approved by the Secretary of the Interior. And without more, at bottom of said deed was the following: "Department of the Interior, Office of Secretary, [fol. 79] Washington, D. C., April 3, 1931: The within deed is hereby approved. (signed) Jos. M. Dixon, First Assistant Secretary."

On December 10, 1937, in written instrument executed by her it is recited that said Wosey John Deere "in consideration of the sum of $1.00 and love and affection * * * does hereby grant, sell, and convey unto Osharsha John, now Evalin Seber, Jimmie Powesheik and Juanita Deere, and the legal issue of their bodies * * *: All of the life estate theretofore reserved in said described property, as shown by the Warranty Deed executed on March 4, 1931, (Exhibit D), recorded in Book 393, at page 596.

The certificate of A. M. Landman, superintendent for the Five Civilized Tribes as to said instrument of December 10, 1937, states:

"* * * the land described in the above deed was purchased for Osharsha John now Evalin Seber, Jimmie Powesheik, and Juanita Deere, * * * for their benefit, by virtue of their being full-blood Creek Indians, not enrolled, and that said purchase was made and said deed was executed and the same is hereby approved pursuant to the Act of Congress approved May 27, 1908 * * * and the regulations prescribed thereunder by the Secretary of the Interior."

The land described in said deed is as follows:

W½ SW¼, Section 27, Twp. 18N, Range 11E; and W½ NW¼ SW¼ SW¼ and W½ E½ NW¼ SW¼ SW¼, Section 36, Twp. 18N, Range 11E; and also the center fifty feet of lot six and the center fifty feet of the south 33.4 feet of lot three, all in Block thirty-nine, of the original town of Sapulpa.

As to the said lots purchased on December 11, 1915, described in Exhibit A, the certificate of Joe H. Strain, acting superintendent for the Five Civilized Tribes, attached thereto, states that same:

"* * * was purchased for the said Wosey John with funds Held in Trust by the United States *for her benefit from funds derived from oil royalties from restricted land, inherited by the said Wosey John, by virtue of her enrollment as a full blood citizen of the Creek Nation, opposite* [fol. 80] *No. 9546 on the final approved rolls of citizens by blood of that Nation.* * * *." (Emphasis supplied)

The land contained in deed (Exihibit B) dated March 24, 1920, is described as follows:

W½ SW¼, Section 27, Twp. 18N, Range 11E; and W½ NW¼ SW¼ SW¼ and W½ E½ NW¼ SW½ SW¼, Section 36, Twp. 18N, Range 11E.

Gabe E. Parker, superintendent for the Five Civilized Tribes, under date of March 24, 1920, in certificate attached thereto, states that the land described in said deed was purchased "for the said Wosey Powesheik, nee John, with funds held in trust by the United States, for her benefit derived from oil royalties *from restricted land allotted to said Wosey Powesheik, nee John*, by virtue of her enrollas a full blood citizen of the Creek Nation, opposite No. 9546 on the final approved rolls of the citizens by blood of that Nation, and that said purchase was made and said deed was executed; and the same is hereby approved pursuant to the regulations prescribed by the Secretary of the Interior under the Act of Congress approved May 27, 1908, and the Act approved August 1, 1914."

As to Exhibit C, deed executed on November 8, 1927, the land described therein being:

W½ SW¼, Section 27, Twp. 18N, Range 11E, (80 acres) A. G. McMillan, acting district superintendent for the Five Civilized Tribes, in certificate attached thereto, dated November 8, 1927, states:

"* * * the land described in the above deed was purchased *for a home for the said Wosey John Deere*, with funds held in trust by the United States for her benefit derived from the sale of oil and gas royalties *from her*

restricted allotment by virtue of her enrollment as a full blood citizen of the Creek Nation, opposite No. 9546 on the final approved rolls of citizens by blood of that Nation, and that said purchase was made and said deed was executed and the same is hereby approved pursuant to the regulations prescribed by the Secretary of the Interior under [fol. 81] the Act of Congress approved May 27, 1908, and the Act approved August 1, 1914."

At the time of the execution of the deeds and the certificates of December 11, 1915 and March 24, 1920, Gabe E. Parker was superintendent for the Five Civilized Tribes and remained in such capacity until March 4, 1921, and Joseph H. Strain, during that period, was assistant superintendent, and on November 8, 1927 A. G. McMillan was acting superintendent. Exhibit D has no certificate attached, merely the statement:

"Washington, April 3, 1931. The within deed is hereby approved (signed) Jos. M. Dixon, First Assistant Secretary."

On December 10, 1937, Wosey John, now Deere, conveyed all of her life estate theretofore reserved in said described property as shown by the warranty deed executed on March 4, 1931 (Exhibit D heretofore referred to), and *certificate* attached to said deed of *December 10, 1937* recites that the land described in said deed was purchased for Osharsha John now Evalin Seber, Jimmie Powesheik, and Juanita Deere, etc., when all other certificates heretofore set out as then and there made at the time the land was purchased proves to the contrary. Certificate designating property exempt from taxation (Exhibit F), signed by Landman, superintendent, dated December 16, 1937, certifies that:

"Pursuant to Section 2 of the Act of June 20, 1936 (49 Stat. 1542), as amended by the Act of May 19, 1937 (Public 96, 75th Congress, First Session), the following designated restricted Indian lands purchased prior to May 19, 1937, out of the trust or restricted funds of Osharsha John, now Evalin Seber, Jimmie Powesheik, and Juanita Deere, a minor. An Indian of the Creek (Tribe-Band-Nation) are hereby selected and designated as a tax exempt homestead to remain non-taxable until otherwise directed by Congress." (description following)

That certificate is at absolute variance with and contrary to the prior official recitals and records as to the lands, funds and royalties shown by official certificates as herein-[fol. 82] before set out, and are as court claimed in Exhibit F, erroneous.

Exhibit F, "Certificate Designating Property Exempt from Taxation, Place, Sapulpa, Okla., Date December 16, 1937, pursuant to Section 2 of the Act of June 20, 1936 (49 Stat. 1542), as amended by Act of May 49, 1937 (Public 96, 75th Congress, First Session), the following designated restricted Indian lands as purchased prior to May 19, 1937 out of the restricted funds of Osharsha John, now Evaline Seber, Jimmie Powesheik, and Juanita Deere, a minor, an Indian of the Creek (Tribe-Band-Nation) are hereby selected and designated *as a tax exempt homestead* (for the three appellees) *to remain non-taxable until otherwise directed by Congress.*

"Description:

"W½ SW Sec. 27, Twp. 18N, Range 11E & W½ NW SW SW & W½ E½ NW SW SW Sec. 36, Twp. 18 N. Range 11 E; Creek County, Okla.

Area 87½ acres (if agricultural and/or grazing lands)—(if village, town or city property).

Osharsha John now Evaline Seber
Jimmie Powesheik
Juanita Deere (a minor)

A. M. Landman, Superintendent of Five Civilized Tribes for Juanita Deere, minor. Department of the Interior, Washington, D. C.

———————Unreadable.

Approved: Date March 24, 1938
Oscar L. Chapman, Assistant Secretary. Sig. WW.

"To be designated by the Indian. The Superintendent to make such designation for all minors; when the Indian is non compos mentis: and in those cases where the Indian fails to designate within a reasonable time. 5379 Received December 27, 1937. Five Civilized Tribes. Office of Indian Affairs. Received December 31, 1937. 79539. Received April 9, 1938. 6163. Supt. Five Civ. Tribes."

Said certificate as to exemption was filed in office of county clerk of Creek County, Oklahoma, on April 12, 1938.

Act of June 20, 1936, as amended by Act of May 19, 1937, [fol. 83] provides that "all lands, the title of which is now

held by an Indian *subject to restrictions against alienation or encumbrance * * * heretofore purchased out of trust or restricted funds of said Indian*, are hereby declared to be *instrumentalities of the Federal Government and shall be non-taxable until otherwise directed by Congress.*" (Emphasis supplied)

Same was not heretofore purchased out of such funds. All of said tracts other than the said town lots were originally allotted as restricted allotments or Creek lands to enrolled members of the Creek tribe, but had become unrestricted before acquired *by and for* Wosey John Deere. One parcel was purchased by and for her with her restricted funds from her allotted oil royalties on December 11, 1915, said purchased parcel consisting of said town lots in the original townsite of Sapulpa, having become unrestricted against alienation as title in fee passed by proper conveyance and with consideration therefor paid and had passed over to the United States Government for the Creek tribe, another on March 24, 1920, and still another on December 8, 1927.

She retained in said deeds a life estate in said realty, including rents and profits accruing therefrom during such period with the restrictive clause therein against alienation, etc., as to the three joint grantees.[3]

[3] Section 1, Enabling Act, June 16, 1906 (34 Stat. 267), Laws Relating to the Five Civilized Tribes of Oklahoma, 1890-1914, pp. 482-495 (34 Stat. 137), provides:

"That nothing contained in the said constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or effect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if this Act had never been passed."

Subdivision 3 of Section 3 thereof:

"That the people inhabiting said proposed State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands dying within said limits

[fol. 84] In Ex Parte Webb, 225 U. S. 663, 32 S. Ct. 769, it is stated:

"It is not our purpose to qualify the doctrine established by repeated decisions of this court that the admission of a new state into the Union on an equal footing with the original states imports an equality of power over internal affairs. * * *

"The most recent decision of this court upon the subject of the proper construction of acts of Congress passed for the admission of new states into the Union in Coyle v. Smith, 221 U. S. 559, 55 L. ed. 853, 31 Sup. Ct. Rep. 688; where it was held that the Oklahoma enabling act (34 Stat. at L. chap. 3335, p. 267), in providing that the capital of the state should temporarily be at the city of Guthrie, and

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owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. That land belonging to citizens of the United States residing without the limits of said State shall never be taxed at a higher rate than the land belonging to residents thereof; that no taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use."

Art. 1, Section 3, Constitution of Okla. and Enabling Act, 2d Ed., Ann. (Williams) pp. 333-338, provides:

"The people inhabiting the State do agree and declare that they forever disclaim all right and title in or to any unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States, the same shall be and remain subject to the jurisdiction, disposal, and control of the United States. Land belonging to citizens of the United States residing without the limits of the State shall never be taxed at a higher rate than the land belonging to residents thereof. No taxes shall be imposed by the State on lands or property belonging to or which may hereafter be purchased by the United States or reserved for its use."

See, also, 61 Pacific Reporter 2d 1139.

should not be changed therefrom previous to the year 1913, ceased to be a limitation upon the power of the state after its admission. The court, however, was careful to state (221 U. S. 574): "It may well happen that Congress should embrace in an enactment introducing a new state into the Union legislation intended as a regulation of commerce among the states, or with Indian tribes situated within the limits of such new state, or regulations touching the sole care and disposition of the public lands or reservations therein, which might be upheld as legislation within the sphere of the plain power of Congress. But in every such case such legislation would derive its force not from any agreement [fol. 85] or compact with the proposed new state, nor by reason of its acceptance of such enactment as a term of admission, but solely because *the power of Congress extended to the subject*, and therefore would not operate to restrict the state's legislative power in respect of any matter which was not plainly within the regulating power of Congress'." (Emphasis supplied). See also, State of Okla. v. Gulf, C. & S. F. R. Co., 220 U. S. 290; Id. v. Chicago, R. I. & P. R. Co., 220 U. S. 302.

Section 442 a, Title 25 U. S. C. A., provides:

"All homesteads, heretofore purchased out of the *trust or restricted funds of individual* Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: Provided, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior: And provided further, that the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town, or city property, not exceeding in cost $5,000, to be designated as a homestead. (June 20, 1936, c. 622, Section 2, 49 Stat. 1542; May 19, 1937, c. 227, 50 Stat. 188.) (Emphasis supplied)

Prior to April 26, 1931 restricted lands of the members of the Five Civilized Tribes, that is, restricted allotments of living full blood allottees and such restricted allotted tribal lands inherited by or devised to full bloods were restricted and in many instances on account of unexpired treaty pro-

vision and enactments pursuant thereto exempt from ad valorem taxation by the State of Oklahoma. By Section 4 of Act of May 10, 1928, 45 Stat. 495, it was declared that on and after said April 26, 1931 all restricted lands of members [4] of the Five Civilized Tribes allotted, inherited or held under devise in *excess* of 160 acres, shall be subject to taxa- [fol. 86] tion by the state in accordance with the laws thereof. With respect to restricted allotments of living allottees the Secretary of the Interior alone then had authority to remove therefrom restrictions against alienation. Lands inherited by or held under devise by full blood members were subject to restrictions against alienation in that no conveyance by them should be valid unless approved by the County Court having jurisdiction of the settlement of the estate of the deceased allottee. Harris et al. v. Bell et al., 254 U. S. 103, 41 Sup. Ct. 49; Parker et al. v. Richard et al., 250 U. S. 235, 39 Sup. Ct. 442.

Act of May 27, 1908 (35 Stat. 312) provides that the status of lands allotted heretofore or hereafter to allottees [5] of the Five Civilized Tribes shall, as regards restrictions, alienations or encumbrances, be as follows:

"All lands, including homesteads, of said allottees enrolled as intermarried whites, as freedmen, and as mixed-blood Indians having less than half Indian blood including minors shall be free from all restrictions. All lands except *homesteads, of said allottees enrolled as mixed-blood Indians having half or more than half and less than three-quarters Indian blood shall be free from all restrictions. All homesteads of said allottees enrolled as mixed-blood Indians having half or more than half Indian blood, including minors of such degrees of blood*, and all *allotted lands of enrolled full-bloods*, and *enrolled* mixed-bloods of three-quarters or more Indian blood, including minors *or* such degrees of blood, shall not be subject to alienation, etc." (Emphasis supplied)

The history of this legislation as to restrictions on the part of Congress affecting the Indians shows a continuous purpose to give the Indian a more independent and responsible status as a citizen and property owner, and disclosing a gradual relinquishment of restrictions upon lands origin-

[4] Enrolled on official roll.
[5] Enrolled members of the Tribe.

ally allotted and encouraging the acquisition of other property, gradually enlarging control until independent management is achieved, and justified, and whilst withdrawing allotted lands from former restrictions that the Indian [fol. 87] might assume his place as a citizen and be expected to bear the same burdens of citizens of the same class whether Indian, white, or black. Mitchell v. Metcalf and Eddy, 269 U. S. 514.

Act of Congress of June 2, 1924 (43 Stat. 253), as a climax of such purpose, provides:

"All Indians born within the territorial limits of the United States are declared to be citizens of the United States. The granting of citizenship to Indians shall not in any manner affect the right of any Indian to tribal or other property."

An exemption as to taxation created by contract in the treaties between United States and Five Civilized Tribes is inviolate. Choate v. Trapp, 224 U. S. 665.

Act of Congress, February 10, 1942 (c. 56 — 2d session, Public Laws 449—77th Cong., S. 1412) entitled "An Act to amend the Act of June 11, 1940 (Public, Numbered 590, Seventy-sixth Congress, third session), providing for the relief of Indians who have paid taxes on allotted land, provides:

"The Act of June 11, 1940 (Public; Numbered 590, Seventy-sixth Congress, ch. 315, third session, 25 U. S. C. A. Section 352c) be, and the same is hereby, amended to read:

"'The Secretary of the Interior is hereby authorized, under such rules and regulations as he may prescribe, to reimburse Indian allottees, or Indian heirs or Indian devisees of allottees, for all taxes paid, including penalties and interest, on so much of their allotted lands as have been patented in fee prior to the expiration of the period of *trust* without application by or consent of the patentee: Provided, That if the Indian allottee, or his or her Indian heirs or Indian devisees, have *by their own act accepted* such patent no reimbursement shall be made for taxes paid, including penalties and interest, subsequent to acceptance of the patent: Provided further, That the fact of such acceptance

shall be determined by the Secretary of the Interior. (Emphasis supplied)

"'In any case in which a claim against a State, county [fol. 88] or political subdivision thereof, for taxes collected upon such lands during the trust period has been reduced to judgment and such judgment remains unsatisfied in whole or in part, the Secretary of the Interior is authorized, upon reimbursement by him to the Indian of the amount of taxes including penalties and interest paid thereon, and upon payment by the judgment debtor of the costs of the suit, to cause such judgment to be released: Provided further, That in any case, upon submission of adequate proof, the claims for taxes paid by or on behalf of the patentee or his Indian heirs or Indian devisees have been satisfied, in whole or in part, by the State, county, or political subdivision thereof, the Secretary of the Interior is authorized to reimburse the State, county, or political subdivision for such amounts as may have been paid by them.'

"Sec. 2. There is hereby authorized to be appropriated the sum of $95,000, or so much thereof as may be necessary, out of any money in the Treasury not otherwise appropriated, for the purpose of carrying out the provisions of this Act.

"Any appropriations made pursuant to this section shall remain available until expended."

(That evidently means when the United States was a party to such actions.)

Section 1 of Act of June 20, 1936 (49 Stat. L. 1542) provided:

"That there is hereby authorized to be appropriated, out of any money in the Treasury of the United States not otherwise appropriated, the sum of $25,000.00 to be expended under such rules and regulations as the Secretary of the Interior may prescribe, for payment of taxes, including penalties and interest, assessed against *individually* owned Indian land the title to which is held subject to restrictions against alienation or encumbrance except with the consent or approval of the Secretary of the Interior, *heretofore purchased out of trust or restricted funds of an Indian, where the Secretary finds that such land was purchased with the understanding and belief on the part of said* [fol. 89] *Indian that after purchase, it would be nontaxable,*

and for redemption or reacquisition of any such land heretofore or hereafter sold for nonpayment of taxes." Emphasis supplied.)

The passage of this act containing this appropriation as well as act of February 10, 1942, was occasioned by developments disclosed in United States v. Board of Co. Comm'rs., 6 Fed. Supp. 401; United States v. Board of Co. Comm'rs., 13 Fed. Supp. 641; Board of Co. Comm'rs. of Caddo County, Okla. v. United States, 10 Cir., 87 F. 2d 55; Board of Co. Comm'rs. of Jackson County, Kan. v. United States, 10 Cir., 100 F. 2d 929, 308 U. S. 343.

Act of May 19, 1937, 25 U. S. C. A., Section 412a, is as follows:

"All homesteads, *heretofore purchased out of the trust or restricted funds of individual Indians, are hereby declared to be instrumentalities of the Federal Government and shall be nontaxable until otherwise directed by Congress: Provided, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior: and provided further, That the Indian owner, or owners, shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town, or city property, not exceeding in cost* $5,000, *to be designated as a homestead.*" (Emphasis supplied.)

Under Section 1 of Act of May 27, 1908, (35 Stat. 312), as amended by Act of May 10, 1928 (45 Stat. 495), all *homesteads* of allottees therein named and enrolled as mixed-bloods of three-quarters or more Indian blood, shall not be all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, shall not be subject to alienation, contract to sell, power of attorney, or any other encumbrance prior to April 26, 1931, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceedings for the benefit of the respective Indians as he may prescribe.

[fol. 90] Section 1 of Act of May 10, 1928, amending said Act of May 27, 1908, entitled "An Act to extend the period of restrictions on lands of certain members of the Five Civilized Tribes and for other purposes," is as follows:

". . . That the restrictions against the alienation, lease, mortgage, or other encumbrance of the lands allotted to members of the Five Civilized Tribes in Oklahoma, enrolled as of one-half or more Indian blood, be, and they are hereby, extended for an additional period of twenty-five years commencing on April 26, 1931: PROVIDED: That the Secretary of the Interior shall have the authority to remove the restrictions, upon the applications of the Indian owners of the land, and may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe."

In case of death of allottees of the Five Civilized Tribes of one-half or more Indian blood leaving full-blood heirs or devisees, Congress provided that no conveyance of their interest in the lands inherited should be valid unless approved by the Court having jurisdiction of the settlement of the estate of the deceased allottee or testator, as provided by Section 9 of Act of Congress of May 27, 1908, and as amended by Section 1 of Act of Congress of April 12, 1926, and further as amended by Section 2 of Act of May 10, 1928 (45 Stat. 495).

Section 9 of Act of Congress of May 27, 1908 (35 Stat. 312) provides as follows:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: PROVIDED, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: PROVIDED FURTHER, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such [fol. 91] deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-six, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-

six, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions."

Section 1 of Act of April 12, 1926, amending Section 9 of Act of May 27, 1908, provides as follows:

"* * * That Section 9 of the Act of May 27, 1908, (Thirty-fifth Statutes at Large, page 312), entitled 'An Act for the Removal of restrictions on part of the lands of allottees of the Five Civilized Tribes, and for other purposes, be, and the same is hereby, amended to read as follows: 'Section 9. The death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: PROVIDED, That hereafter no conveyance by any full-blood Indian of the Five Civilized Tribes of any interest in lands restricted by Section 1 of this Act acquired by inheritance or devise from an allottee of such lands shall be valid unless approved by the county court having jurisdiction of the settlement of the estate of the deceased allottee or testator: PROVIDED FURTHER, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March 4, 1906, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior for the use and support of such issue, during their life or lives, until April 26, 1931: but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will, free from restrictions: if [fol. 92] this be not done, or in the event the issue hereinabove provided for die before April 26, 1931, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions. *Provided*, That the word 'issue' as used in this section shall be construed to mean child or children."

Under Section 9 of Act of May 27, 1908, as amended by Section 1 of Act of April 12, 1926, except where allottees of the Five Civilized Tribes of one-half or more Indian blood should die leaving issue surviving, born since March 4, 1906, the homestead of such deceased allottees remained inalienable unless removal of restrictions was effected by the Secretary of the Interior, for the use and support of such issue

during their life or lives, until April 26, 1931, and after the passage of said act of May 10, 1928, until April 26, 1956.

The power of Congress as to continuing or reimposing restrictions upon the alienation of allotted Indian lands in the Creek Nation has been passed on, (Tiger v. Western Inv. Co., 221 U. S. 286, 31 S. Ct. 578; Brader v. James, 246 U. S. 88, 38 S. Ct. 285), and Section 1 of Act of January 27, 1933, considered in Whitchurch v. Crawford, 10 Cir., 92 F. 2d 249, with reference to the supervision of the Secretary of the Interior, relating to restricted funds and other securities theretofore in custody of Secretary of Interior under original Section 9 of Act of May 27, 1908 "belonging to and only so long as belonging to Indians of the Five Civilized Tribes in Oklahoma of one-half or more Indian blood, enrolled or unenrolled," such Indians declared to be restricted and remain subject to jurisdiction of Secretary of Interior until April 26, 1956.

To said Section 1 is attached a proviso:

"That where the entire interest in any tract of restricted and tax-exempt land belonging to members of the Five Civilized Tribes is acquired by inheritance, devise, gift, or purchase, with restricted funds by or for restricted Indians, such lands shall *remain* restricted and *tax-exempt* during the life of and as long as held by such restricted Indians, but not longer than April 26, 1956, unless the restrictions [fol. 93] are removed in the meantime in the manner provided by law." (Emphasis supplied.)

Such inherited (remain) restricted or tax-exempt land necessarily meant lands of such tribe allotted to members of the tribe.

Originally in said Section 1 of Act of May 27, 1908, reference is made to enrolled Indians, and then by the act of January 27, 1933, is included not only enrolled but unenrolled Indians where they acquire by inheritance or devise such land, and if it is originally designated as an allotted homestead, though where such Indian acquired it by inheritance or devise, if such Indian was enrolled or unenrolled as one-half blood of such tribe, then the land so held shall *remain restricted* and tax-exempt, and as to restrictions against alienation conveyances relative thereto to be subject to the approval of the Secretary of the Interior, etc., and the Indians not being required to *live in* Oklahoma, as the reference is made in said Section 1 to supervision of the

Secretary of the Interior relating to funds and other securities theretofore "belonging to and only so long as belonging to Indians of the *Five Civilized Tribes in Oklahoma of one-half or more Indian blood enrolled or unenrolled.*" (Emphasis supplied)

In what is known as the Original Creek Treaty, ratified and confirmed by Congress on March 1, 1901 (c. 676, 31 Stat. 861) Sections 2, 5 and 6, one hundred and sixty (160 acres of allotted land was to be selected by the allottee to include improvements which belonged to him, constituting an allotment, forty (40) acres to be selected and designated as a homestead which "shall be non-taxable and inalienable and free from any incumbrance whatever for twenty-one years," (as to full bloods by Section 19, Act of April 26, 1906, extended to twenty-five years from that date), "for which he shall have a separate deed" so conditioned as required in Creek treaty.

(Section 10 of said treaty covers townsites.)

Supplemental Creek Treaty was confirmed by Congress on June 30, 1902 (c. 1323, 32 Stat. 500), Section 3 thereof providing that paragraph 2 of section 3 of the agreement ratified by said act of Congress approved March 1, 1901, [fol. 94] should be amended, not changing the effect of the provision in the original treaty as to allotments and homesteads, merely providing detail as to the appraised value, etc.

Section 19 of Act of April 26, 1906 (c. 1876, 34 Stat. 137), entitled "An act to provide for the final disposition of the affairs of the Five Civilized Tribes in the Indian Territory, and for other purposes," reimposed restrictions as to full bloods in the Five Civilized Tribes, and extended same from 21 to 25 years after the approval of said act, and provided that the quantum of Indian blood possessed by any member of said tribes shall be determined by the rolls of citizens of said tribes approved by the Secretary of the Interior, with the proviso that all lands upon which restrictions are removed shall be subject to taxation, and other lands shall be exempt from taxation as long as the title remains in the original allottee.

The Solicitor of the Department of the Interior, on March 14, 1934, held that:

"Apropos of this is the declaration that 'Where the entire interest in any tract of restricted and tax-exempt land * * * is acquired * * * by restricted Indians, such

lands shall remain restricted, and tax-exempt.' This declaration obviously looks to the future and not to the past and discloses a plain intent on the part of Congress to preserve existing restrictions rather than to reimpose restrictions once removed, or change the form of existing restrictions. These considerations lead to the conclusion that the proviso relates only to lands acquired after date of enactment and not to prior acquisions."

Congressional legislation has had for its purpose especially as to the Five Civilized Tribes to gradually emancipate them from their former status so as to fit them for duties of citizenship and self support and maintenance. The developed responsibility has been indicated. The electorate of the state of Oklahoma for three consecutive terms elected a member of the Five Civilized Tribes to the United States Senate, and two different members of said tribes to the lower house of the Congress of the United States, one consecutively for ten terms and the other for ten terms [fol. 95] with an interim of one term. Four members of said tribes have been elected and re-elected district judge, one of them elevated by the electorate to the Supreme Court of the state and now serving as Chief Justice, and two of the others are still continuing as district judges, and the other holds some responsible appointive position in the Interior Department in Washington. One was elected and served a full term as Secretary of State, and another is entering upon his third consecutive term by election as Clerk of the Supreme Court. Two members of said tribes have been speaker of the House of Representatives of the legislature, and another president pro tempore of the Senate of the legislature, and members of said tribes have on many occasions and repeatedly been elected to the State Senate and the lower house of the legislature, and the county offices, including county judge, have been many times and repeatedly filled by election from members of the Five Civilized Tribes. In the business sphere the Five Civilized Tribes have engaged in banking, merchandising, ranching, law, medicine, and education. Mitchell v. Metcalf & Eddy, *supra;* Shaw v. Gibson-Zahniser Oil Corp., 276 U. S. 571.

As to the treaty provisions between the United States and the Five Civilized Tribes, under which the United States Government made contracts with the Indians guaranteeing exemption of taxes, the courts have given a liberal

construction to the treaty to protect the Indians in exercise of such rights as therein guaranteed. But as to legislative matters arising since April 26, 1931, the general rule as to strict construction applies, that is, to follow the manifest wording of the statute and to be determined from the surrounding circumstances and the language or words from which a conclusion reasonably and necessarily follows. Choate v. Trapp, 224 U. S. 65; Blundell v. Wallace, 267 U. S. 372; Cully v. Mitchell, 37 F. 2d 493; Choteau v. Burnett, 283 U. S. 691; Shaw v. Gibson-Zahniser Oil Corp., 276 U. S. 571; Metcalf & Eddy v. Mitchell, 269 U. S. 514.

Section 2, Act of June 20, 1936, as amended by Act of May 19, 1937, was not passed in view of matters of the Five Civilized Tribes, but as to other tribes. (6 Fed. Supp. 401, *supra*; 13 Fed. Supp. 641, *supra*; 87 F. 2d 55, *supra*; 100 F. 2d 929, *supra*; 308 U. S. 343, *supra*.)

[fol. 96] Congressional Record, Senate, June 6, 1936, p. 9322, Relief of Indian Lands From Taxation:

"Mr. King: Mr. President, I should like to have an explanation of the bill.

"Mr. Thomas of Oklahoma (Chairman of Committee on Indian Affairs): Mr. President, this bill seeks to accomplish certain purposes * * * Formerly the Congress authorized the Secretary of the Interior to buy land for landless Indians * * *. Some lands were taken from private ownership and assessing authorities proceeded to assess the land for taxes. * * * In some cases tax warrants have been issued and the Indians have been threatened with dispossession. * * * tax warrants and tax assessments should be paid and the title to the lands cleared. The bill authorizes the appropriation of money for that purpose.

"Section 2 (of said act) provides that the lands so secured shall hereafter be nontaxable.

"The President pro tempore. The question is on the third reading and passage of the bill. (No further discussion or question raised.")

"The bill was ordered to a third reading, read the third time, and passed, as follows:" (Said Act of June 20, 1936 follows in the record.) Richbourg Motor Co. v. U. S., 281 U. S. 528; McLean v. U. S. 226 U. S. 374.

The Creeks of the Five Civilized Tribes could not properly be denominated landless Indians. The Congress had

not recently authorized the Secretary of the Interior to purchase lands for them or any of them. As one of the Five Civilized Tribes, lands were allotted to their members by the Government, under the Creek treaty, including all full blood allottees and their heirs and they still own said lands except as restrictions have been removed and such owners permitted to sell same, and that has occurred among the Creeks only in rare and exceptional cases. Under the treaties and facts hereinbefore set forth, such Creek lands, consisting of full blood allotments, have been nontaxable prior to April 26, 1931, and the lands which have been purchased from their restricted funds under the decisions here- [fol. 97] inbefore cited were taxable not only before such purchase where restrictions had ceased, or been removed, and after 25 years from April 26, 1906, which would be April 26, 1931 unless reimposed. Under the said acts of April 12, 1926 and May 10, 1928, Congress continued in applicable cases not only restrictions but also nontaxability not exceeding 160 acres, held by an allottee after April 26, 1931. That would cover the original allotted lands of Wosey John Deere, but a serious question arises as to whether after the tax exemption had expired under the treaty provision and limitation it was in the power of Congress to extend the exemption as to taxation. It is not essential here to determine that question in order to dispose of this case.

The land acquired by inheritance by a full blood under such conditions as it would be restricted after April 26, 1931, as well as the lands purchased under the supervision of the Secretary of the Interior with restricted funds, such land under such a state of facts could be considered as restricted by reimposition, but not to be exempt from taxation either as to such allottee or unenrolled full blood born after March 4, 1906.

Section 2 of said act of June 20, 1936, as amended by act of May 19, 1937, is not applicable to the lands here involved.

The word "homestead" as used in this statute, if intended to apply to the Five Civilized Tribes whose members were citizens of Oklahoma and also of the United States, would have contemplated a homestead as defined by state law.

Section 1, Article 12, Constitution of Oklahoma, provides that:

"The homestead of any family in this State, not within any city, town or village, shall consist of not more than one hundred and sixty acres of land, which may be in one or more parcels, to be selected by the owner. The homestead within any city, town, or village, owned and occupied as a residence only, shall consist of not exceeding one acre of land, to be selected by the owner: Provided, That the same shall not exceed in value the sum of five thousand [fol. 98] dollars, and in no event shall the homestead be reduced to less than one-quarter of an acre, without regard to value; And Provided Further, That in case said homestead is used for both residence and business purposes, the homestead interests therein shall not exceed in value the sum of five thousand dollars: Provided, That nothing in the laws of the United States, or any treaties with the Indian Tribes in the State, shall deprive any Indian or other allottee of the benefit of the homestead and exemption laws of the State: And Provided Further, That any temporary renting of the homestead shall not change the character of the same when no other homestead has been acquired."

Section 34, Title 68, Okla. Stat. Anno. (Okla. Stat. 1941, Section 34, Title 68), provides:

"Homesteads, as defined in Section 1 hereof, are hereby classified for the purpose of taxation as provided in Section 22, Article 10 of, and subsequent amendments to, the Constitution of the State of Oklahoma; and all homesteads in this State shall be assessed for taxation the same as other real property therein, except that each homestead, as defined in this Act, shall be exempted from all forms of ad valorem taxation to the extent of one thousand ($1,000.00) dollars of the assessed valuation thereof, as hereinafter provided, except that all assessments, levies, encumbrances, and other contract obligations incurred or made prior to the taking effect of this Act, shall in no way be affected or impaired by this Act. Laws 1936, Ex. Sess., p. 52, Section 2."

Section 33 thereof provides:

"The term 'homestead', as used in this Act, shall mean and include the actual residence of a natural person who is a citizen of the State of Oklahoma, provided the record

actual ownership of such residence be vested in such natural person residing and domiciled thereon. The surviving spouse and minor children of a deceased person shall be considered record owners of the homestead where the title is in the name of the deceased, but in all other cases the [fol. 99] deed or other evidence of ownership must be of record in the office of County Clerk on January 1st in order for any person to be the record actual owner. A rural homestead shall not include more than One Hundred Sixty (160) acres of land and the improvement thereon; and an urban homestead shall not include any land except the lot or lots, or the unplatted tract, upon which are located the dwelling, garage, barn and/or other outbuildings necessary or convenient for family use.

"Provided, that no building which is used in whole, or in part, for commercial purposes shall be deemed a homestead under the provisions of this Act; and

"Provided further, that the keeping of boarders or roomers by citizens in a building maintained otherwise exclusively as a home shall not be considered as commercial purposes as contemplated by this Act.

"The term 'rural homestead' as used herein shall mean and include any homestead located outside a city or town or platted subdivision or addition.

"The term 'urban homestead' as used herein shall mean and include any homestead located within any city or town whether incorporated or unincorporated, or located within any platted subdivision or addition, whether such subdivision or addition be a part of a city or town or a part of a township; provided further, that in no case shall an urban homestead exceed in area one (1) acre. Laws 1936, Ex. Sess., p. 52, Section 1; Laws 1939, p. 405, Section 1."

In the deed executed by Wosey John, now Deere, on December 10, 1937, is conveyed to the appellees "all of the life estate heretofore reserved in the following described property described in deed executed by her on March 4, 1931", described as follows:

W½ SW¼ of Section 27, Twp. 18N, Range 11E; W½ NW¼ SW¼ SW¼ and W½ E½ NW¼ SW¼ SW¼ of Section 36, Twp. 18N, Range 11E, also the center 50 feet of lot 6 and the center 50 feet of the south 33.4 feet of lot 3, all in Block 39, of the original town of Sapulpa,

"together with all the improvements thereon, and the ap-
[fol. 100] purtenances thereunto belonging * * *. To have and to hold said described premises unto said grantees, their heirs, and assigns, forever, free, clear, and discharged of all former grants, charges, taxes, judgments, mortgages, and other liens and encumbrances of whatsoever nature, subject to the condition that no lease, deed, mortgage, power of attorney, contract to sell, or other instrument affecting the land herein described or the title thereto shall be of any force and effect, unless approved by the Secretary of the Interior or the restrictions from said land are otherwise removed by operation of law," substantially identical with the clause contained in Exhibit D, deed executed by her to appellees dated March 4, 1931.

Section 69, Title 60, Okla. Stat. Anno., p. 250, (Section 69, Title 60, 1941 Stat.) provides:

"The owner of a life estate must keep the buildings and fences in repair from ordinary waste, and must pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance."

Under deed of December 10, 1937, when properly approved by the Interior Department, the complete title vested in the appellees, and the question may arise as to her liability under the warranty therein for any encumbrances remaining thereon for taxes, though such warranty was executed as a pure gift. Claim of the appellees against the mother or the estate of the mother, according to the record, has not been set up, but such claim for exemption of the land from state taxation until Congress otherwise provides was presented, not by virtue of a mandatory provision of the Creek treaty, and thereby with a guaranty on part of the United States Government. If appellees prevail it must be by strict construction in application of the facts under act of June 20, 1936, Section 2, providing "lands heretofore purchased out of trust funds or restricted funds of the said Indian are hereby declared to be instrumentalities of the federal government and shall be nontaxable until otherwise directed by Congress."

The lands described in Exhibits A, B, and C *were not heretofore purchased by the trust or restricted funds of*

appellees for appellees, but out of such funds of Wosey John [fol. 101] *Deere, by and for her,* and the eighty-acre tract as a ~~home for her, not as~~ an original homestead but for a home for her. She already had an allotment homestead, burdened with the production of oil, with tax exemption, and it may be assumed that it was not suitable for a home on account of oil production, as it was purchased for a home for her. All lands described in said deeds, none being part in any way of her allotment, were purchased by and for her and not for any one else.

Section 2 of Act of June 20, 1936, as amended by Act of May 19, 1937, provided that "*all homesteads heretofore purchased out of trust or restricted funds of individual Indians are hereby declared to be instrumentalities of the Federal Government and shall not be taxable until otherwise directed by Congress,* (emphasis supplied) Provided, That the title to such homesteads shall be held subject to restrictions against alienation or encumbrance except with the approval of the Secretary of the Interior; And provided further, That the Indian owner or owners shall select, with the approval of the Secretary of the Interior, either the agricultural and grazing lands, not exceeding a total of one hundred and sixty acres, or the village, town, or city property, not exceeding in cost $5000.00, to be designated *as a homestead.*". (Emphasis supplied)

The lands described in Exhibits A, B and C were not purchased with restricted trust funds of appellees, but from restricted funds of the mother, and the mother having on March 4, 1931 conveyed said restricted lands to said appellees retaining "all the rents and profits to be derived from all of the above property as long as she lives, that is, grantor retains a life estate in all of the real estate described in this deed, together with all the improvements thereon and such appurtenances thereunto belonging, and warrant the title to the same" and subsequently on, and after May 19, 1937, December 10, 1937 had conveyed all of her life estate theretofore reserved by her in all of said lands together with all improvements thereon and the appurtenances thereunto belonging and warrant the title to the same," then the appellees were not justified under the facts of the record and of which we take judicial knowledge and the law to designate that 87½ acres, all of it except the [fol. 102] town lots, *as a homestead* jointly for appellees, not having theretofore been purchased out of restricted

funds of said appellees, then to say in order to place that property in favor of these three unenrolled full blood Indians—not enrolled members of the Creek tribe—in a status as being immune from taxation until Congress shall otherwise provide, that said Section 69, Title 60, Okla. Stat. Anno., *supra*, requiring the holder of a life estate "to keep the buildings and fences in repair from ordinary waste, and to pay the taxes and other annual charges, and a just proportion of extraordinary assessments benefiting the whole inheritance," when her estate would be liable for a breach of that statutory provision though their claim would be without any actual consideration other than love and affection for the warranty, that immunity from taxation cannot be sustained on the question of relation.

In Nos. 2558, 2559, 2560, United States v. Oklahoma Tax Commission, pending in the Circuit Court of Appeals for the Tenth Circuit, this court takes judicial knowledge of contents of records in said cases, and inheritance or transfer or excise tax as provided by the Oklahoma statute as therein disclosed to be claimed, involves $359,643 of unrestricted funds in custody of Secretary of Interior from estate of Wosey John Deere, full blood Creek woman killed in an automobile accident September 2, 1938, on which the Oklahoma State Tax Commission recovered such excise tax thereon in sum of $14,908 under judgment of the United States District Court for the Eastern District of Oklahoma, which the United States, as appellant, seeks in this court in said cases to have vacated on review.

Under application of the plea of relation, immunity from taxation may not be allowed. Such relation does not arise except on account of a consideration therefor, or an equity would have to exist on the part of appellees, which is not shown here. Godfrey v. Iowa Land & Trust Co., 24 Okl. 293, 95 Pac. 797; Stark v. Stark, 6 Wall., 18 L. Ed. 925; Jones v. Meehan, 175 U. S. 4, 20 S. Ct. 2, 44 L. Ed. 51; Wallace v. Adams, 204 U. S. 419, 27 S. Ct. 363, 51 L. Ed. 547.

The land restricted in the mother out of pure love and affection was by her donated to the appellees.

[fol. 103] This court takes judicial knowledge of the fact that the inherited restricted estate of Wosey John Deere in the custody of the Secretary of the Interior on September 2, 1938 amounted to $359,643 and the record shows that these appellees were her heirs, and to say that appellees are

not required to present a claim for that and collect same, but on the doctrine of relation that they shall have a right to be released from state taxes thereon until Congress otherwise provides in effect results in violating the Tenth Amendment to the Constitution of the United States.

The date of the judgment is July 17, 1941, from which this appeal is prosecuted. Neither the United States nor the Secretary of the Interior nor any governmental agency was a party thereto either in the trial or appellate court nor has any appearance in any respect been herein made. An individual action brought by allottees or members of the Five Civilized Tribes with no appearance in any way whatever on the part of the United States, the statute of limitations and mandatory preliminary requirements as to state procedure applies. In Broadwell v. Board of Commissioners of Bryan County, 88 Okl. 147, 211 Pac. 1040, cert. den. 262 U. S. 750, 43 S. Ct. 525, 67 L. Ed. 214, it was held that the statute of limitations in such a case constituted a bar to the parties thereto. See also, Ward v. Board of County Comm'rs., 253 U. S. 17; Carter v. Collins, 174 Okl. 4; Antrim v. Sneed, 175 Okl. 47, 52 P. 2d 1040. As to an action thereafter brought by the United States for the use or benefit of any such party neither the statute of limitations nor said preliminary state statutory procedure applied. Board of Commissioners of Bryan County v. United States, 10 Cir., 123 F. 2d 782, cert. den. — U. S. —.

Act of June 11, 1940 and of February 10, 1942, provided for reimbursement to Indian allottees or Indian heirs or Indian devisees of allottees for taxes paid including interest paid on so much of their restricted allotted lands as may have been patented in fee and restrictions not to expire prior to the expiration of the twenty-five year period of trust, and that does not apply to any lands of the members of the Five Civilized Tribes but to Indians that received allotments and patents under the General Allotment [fol. 104] Act of February 8, 1887 (24 Stat. 391), in cases in which a claim against a state, county or political subdivision for taxes collected upon such land during the trust period, which was the twenty-five year trust period, later extended, under the allotments made under said act of February 8, 1887.

No trust restricted funds of appellees or either of them were invested in said realty as to which the taxes were here involved. The eighty acres included in Exhibit C was

purchased by the Secretary of the Interior as a home for the mother out of her restricted funds described in the conveyance with a warranty by Wosey John, now Deere, on March 4, 1931 to appellees jointly, retaining in herself a life estate including therefrom proceeds from rents and profits. If it was her statutory duty to pay the lawful taxes thereon her estate was amply able to meet such liability. Appellees must bring themselves within the express terms of the statute and within a strict construction thereof as no other reasonable conclusion can be reached therefrom sustaining such right on their part, and the application of the doctrine of relation in Indian matters is not justified by this record.

Evelyn Seber, otherwise designated as Osharsha John, Jimmie Powshick and Juanita Deere, now McIntosh, all born to said Wosey John Deere after March 4, 1906, and unenrolled, are her heirs and by inheritance participate in all of her estate including her allotted realty consisting of of forty-acre original homestead and the additional part of said original allotment, all restricted, and also her restricted inherited allotted Creek lands, including restricted royalties and restricted funds, from all of her land, all held by the Secretary of the Interior as such restricted funds and realty for her benefit at and prior to September 2, 1938, the date of her death occasioned by an automobile accident, and said three unenrolled full blood heirs participate by inheritance therein and after September 2, 1938 the Secretary holds in trust their respective inheritance, which may rest under another status. Landman, Supt., v. Comm'r. of Internal Revenue, 10 Cir., 123 F. 2d 787.

The applicability of federal instrumentalities constituting estate tax immunity is to be applied only by a strict construction. Under the Farm Security Administration, money [fol. 105] is made available by loan from federal funds to acquire non-urban homes and also vast sums of money have been advanced under the Federal Housing Administration as to urban homes. Under the Farm Security Administration money has been furnished to members of the Five Civilized Tribes, whose restrictions expired by operation of law, and their allotments had been lost, and as to persons who had received free homes or homesteads in what was formerly known as Oklahoma Territory, and had been lost, to acquire homes upon which these Government agencies hold liens for these vast advancements or guaranties, and

the occasion may arise when Congress, supported by public sentiment, will pass a like act for relief as to such holders of non-urban homes as well as urban homes, providing that same will be immune from state taxation, denominating same as a federal instrumentality. Then the question would arise as to whether that was an extension of the ruling in this case. A strict construction should here be followed.

By Joint Resolution, Congress extended the tribal existence and government of the Five Civilized Tribes of Indians in the Indian Territory (S. J. Res. 37, March 2, 1906, 34 Stat. 822; Laws Relating to the Five Civilized Tribes in Oklahoma [1890-1914], p. 524), as follows:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes or Nations of Indians in the Indian Territory are hereby continued in full force and effect for all purposes under existing laws *until all property of such tribes, or the proceeds thereof*, shall be distributed among the individual members of said tribes unless hereafter otherwise provided by law." (Emphasis supplied.)

Later in act of April 26, 1906, 34 Stat. 137, the last Section (28) of said Act, other than repealing part, is as follows:

"That the tribal existence and present tribal governments of the Choctaw, Chickasaw, Cherokee, Creek, and Seminole Tribes or nations are hereby continued in full force and effect for all purposes authorized by law, until [fol. 106] otherwise provided by law, but the tribal council or legislature in any of said tribes or nations shall not be in session for a longer period than thirty days in any one year; Provided, That no act, ordinance, or resolution (except resolutions of adjournment) of the tribal council or legislature of any of said tribes or nations shall be of any validity until approved by the President of the United States: Provided further, that no contract involving the payment or expenditure of any money or affecting any property belonging to any of said tribes or nations made by them or any of them or by any officer thereof, shall be of any validity until approved by the President of the United States."

Reference has been made herein to the fact that this suit has been brought by the appellees, three non-enrolled but full United States and state citizens—full blood Creek Indians—without the United States Government in any way appearing, and that under such facts the statute of limitations and mandatory preliminary procedure apply.

In Helvering Mountain Producers Corp., 303 U S. 376, 58 S. Ct. 623, it is stated:

"The power to tax should not be crippled by extending the Constitutional exemption from taxation to those subjects which fall within the general application of nondiscriminatory laws, and where no direct burden is laid upon the governmental instrumentality and there is only remote, if any, influence upon the exercises of the functions of government."

Under the *state* homestead exemption statute, every homestead as therein defined is in effect exempt from taxation up to the assessed value of $1,000 and where it exceeds that it is only taxable for the assessed sum in excess of an assessed $1,000.

These appellees under this record are not entitled to tax exemption on the 87½ acres land designated as a *homestead* for the three appellees under act of Congress, but may when facts justify have assistance or credit under the state act hereinbefore set out.

In the conclusion of the majority opinion insofar as the [fol. 107] judgment of the trial court grants a recovery for the taxes and penalties for the taxable year beginning July 1, 1936, was erroneous, to that extent I concur, and also in the conclusion that allowance of interest on the taxes paid should not be permitted, but I further conclude the judgment of the trial court in toto should also be reversed and remanded.

IN UNITED STATES CIRCUIT COURT OF APPEALS

JUDGMENT—September 2, 1942.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Oklahoma and was argued by counsel.

In consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby modified insofar as the judgment of the trial court grants a recovery for the taxes and penalties for the taxable year beginning July 1, 1936, and insofar as the judgment of the trial court makes an allowance of interest on the taxes paid which are held to be illegal and void, and, as so modified, affirmed; and that Evelyn Seber, otherwise known as Osharsha John et al., appellees, have and recover of and from Board of County Commissioners of the County of Creek, State of Oklahoma, a municipal corporation, et al., appellants, their costs herein.

On October 8, 1942, the mandate of the United States Circuit Court of Appeals, in accordance with the opinion and judgment of said court, was issued to the United States District Court.

[fol. 108] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 109] SUPREME COURT OF THE UNITED STATES, No. 556, OCTOBER TERM, 1942

ORDER ALLOWING CERTIORARI—Filed January 11, 1943.

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Tenth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: Enter Mac Q. Williamson, File No. 47,057, U. S. Circuit Court of Appeals, Tenth Circuit, Term No. 556, Board of County Commissioners of the County of Creek, State of Oklahoma, a Municipal Corporation, et al. Petitioners vs. Evelyn Seber, et al., Petition for a writ of certiorari and exhibit thereto. Filed November 30, 1942. Term No. 556 O. T. 1942.